

No. 11919

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner

vs.

O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,

Appellees.

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
PHILIP MURRAY, Individually and as
President of the United Steelworkers of
America, C.I.O.,

Intervenors.

Transcript of Record
In Four Volumes
VOLUME III
Pages 913 to 1368

Upon Petition for Enforcement With Modifications of an
Order of the National Labor Relations Board.

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(Testimony of John Despol.)

A. I did not know the Pioneer Electric operation was still continuing into effect; in fact, so far as I knew—I knew at that time it was obsolete and no longer operative in the plant. I did know that during the previous hearing in 1944 that Mr. Anaya stated to me that the payroll of the Pioneer Electric had been run into the O'Keefe and Merritt hearing. What proof there is to that, I don't know, not being there.

Q. I don't know either, but what did you understand him to mean by the words "run into the hearing"? Did you get any further information?

A. That it had been made part of the case.

Q. You took that to mean that Mr. Anaya at that time had full knowledge that there was a Pioneer Electric Company operating there?

A. Mr. Anaya apparently was not aware of the Pioneer Electric operation, nor that the payroll of the Pioneer Electric had been submitted as part of the Moulders' eligibility list, which resulted in our inability to secure an election, other than that time it had been restricted to O'Keefe and Merritt payroll list at that time. It is my understanding we had the required percentage to secure the election.

Q. There was no election as a result of that hearing in April, 1944?

A. Not at that time.

Q. I think it is a fair statement, is it not, to say that as a result of what Mr. Anaya told you, you knew, after he conveyed the information to you, that there were two separate payrolls involved in

(Testimony of John Despol.)

the general area covered by what you knew as the O'Keefe and Merritt operation?

A. As a war time operation, yes.

Q. Did you know or learn anything further about the Pioneer Electric, that is, as to what it was making or whether it was a corporation or partnership or anything else about it that seemed relevant to you?

A. No, I did not, except that when I discussed organizational [801] problems with the employees at the plant, that there was no mention by them of any production operation of Pioneer Electric.

Q. And when was that?

A. In the fall of 1945.

Q. Mr. Spallino has spoken about these reports that were being made by him to Louie Ortega. Did you receive from Ortega or others any of that information that was so being reported?

A. What information are you referring to?

Q. I mean the information that was being reported by Mr. Spallino to Mr. Louie Ortega.

Mr. Tyre: I will object to that question on the ground that it calls for hearsay. The question apparently requires Mr. Despol to know what information was conveyed from Mr. Spallino to Mr. Ortega, and I think that is beyond the province of this witness.

Trial Examiner Kent: I think unless the witness was here and heard Spallino's testimony, he probably would not know just exactly what counsel is referring to.

(Testimony of John Despol.)

The Witness: I was here during part of it, but not all of it.

Mr. Tyre: I think he would also have to know what particular information counsel is now referring to.

Mr. Garrett: All right. [802]

Q. (By Mr. Garrett): You were getting reports about conditions inside the plant in the fall of 1945, which enabled you to conclude that the Pioneer Electric operation was dormant, let us say? Would that be a fair statement?

A. My reports indicated that Pioneer Electric was not even an issue at the plant.

Q. Not even an issue. What do you mean by saying it is not even an issue, Mr. Despol?

A. That the corporation as such was not operating the plant, to the best of my knowledge.

Q. The information you got was that—well, let's correct that a little bit, Mr. Despol. I think that we can rely upon the statements of Mr. Collins to the extent of conceding that the Pioneer Electric Company was a co-partnership rather than a corporation.

A. A co-partnership.

Q. You mentioned it as a corporation. I notice that your attorney has a photostatic copy of the articles of co-partnership, and I think that he will probably agree.

Now, as to the co-partnership, which was doing business under the Pioneer Electric Company, you

(Testimony of John Despol.)

concluded in the fall of 1945 that it was not even in operation, is that correct?

A. Or that they had no employees at the plant that we were organizing.

Q. Well, which? [803] A. Both.

Q. Did you conclude that they were not in operation or that they had no employees?

A. That they were not in operation and had no employees at the plant that we were organizing.

Q. Did you further conclude on the basis of information that you received that they had no employees in the plant, irrespective of whether or not you were organizing them?

A. I didn't even think about that question. I was only thinking about the employees who were coming under the jurisdiction of the United Steelworkers and who were organizable.

Q. It would not be that you had inadvertently forgotten about the Pioneer Electric Company.

A. No, we very definitely considered that, and if you are referring to the sales force, I didn't even consider the question of the sales force, if that is what you wanted.

Q. I am not referring to the sales force. You are starting in to cross-examine me now, Mr. Despol. I am definitely not talking about the sales force. I am talking about the production and maintenance employees.

A. I concluded they had no such production or maintenance employees in the plant.

Q. Irrespective of whether they were the ob-

(Testimony of John Despol.)

jectives of your affections in the matter of organization or not, you concluded there just weren't any, is that correct? [804]

A. That is correct.

Q. On the basis of what information did you reach that conclusion?

A. On the basis that we were not able to discover any employees of Pioneer Electric at the plant.

Q. That is right, you were not able to discover them. Now, what did you discover?

A. Everyone that we talked to was an employee of O'Keefe and Merritt.

Q. The ones you talked to were O'Keefe and Merritt?

A. As far as we could determine.

Q. Was it solely on that basis that you came to the conclusion that there were no other employees there but O'Keefe and Merritt employees, just because the ones you talked to happened to be O'Keefe and Merritt employees?

A. In the absence of any evidence or any information that Pioneer Electric was still an operating concern, I concluded that it was a war time operation and had gone out of existence along about V-J Day or prior thereto.

Q. That was the conclusion that you operated under?

A. That is correct.

Q. Now, assuming that conclusion to have been incorrect, did anybody connected with the A. F. of L. make any representations to you which led you to reach that conclusion?

(Testimony of John Despol.)

A. I don't even think that I ever discussed Pioneer Electric [805] with the A. F. of L. prior to January 1st, or prior to the election, the National Labor Relations Board election that is.

Q. Now going a little further, did any of the persons you talked to who were connected with or who were supporting the C.I.O. in the plant make any representations to you as to whether there were or were not present other employees of the Pioneer Electric Company.

A. The only conversations that I had with employees were in respect to the Pioneer Electric payroll in that case that occurred during war time, 1944, and that is all.

Q. You had known that along about that time, in 1944, there was a sufficient number of Pioneer Electric employees down there to seriously affect the question of whether or not there would be an election, is that correct?

A. We didn't know at the time of the hearing, but we discovered it sometime thereafter. As to when, Mr. Anaya would know that better than I.

Q. Well, Mr. Anaya told you and after the evidence was all in, you knew then that there had been quite a lot of Pioneer Electric employees there at the time you had the R hearing in April, is that right?

A. I knew that when I returned from Washington, D. C. and we considered the question of organizing O'Keefe and Merritt.

(Testimony of John Despol.)

Q. And, as a matter of fact, I think just a moment ago you [806] blamed the presence of that number of Pioneer Electric employees for your failure to get an election in 1944, is that a fair statement?

A. I said it affected the determination as to the percentage of employees that we represented, in terms of the one payroll or the combined payrolls of Pioneer Electric and O'Keefe and Merritt.

Q. Well, of course, one employee would affect the percentage, so that is not what I wanted you to tell me. It is a fact, is it not, that after you got back from the east and found out what had happened to Mr. Anaya in this R proceeding in 1944, that you came to the conclusion that the quantity of Pioneer Electric employees there had been sufficient to exert a decisive effect on the question of whether or not the C.I.O. obtained the election?

A. Mr. Anaya did not tell me that it was decisive. He said it adversely affected our presentation of representation. As to whether it was decisive, I would not know, because I have not seen the facts or figures on either factor.

Q. Did he tell you the extent to which he believed it adversely affected your 1944 petition?

A. No, he did not.

Q. Did he blame his failure in that case upon the effect of the Pioneer Electric payroll?

A. No, I think it was primarily our inability to secure a [807] sufficient number of O'Keefe and

(Testimony of John Despol.)

Merritt payrollers to compensate for any additional payrollers from the Pioneer Electric payroll.

Q. I see. So he was not that unusual type of employee who take the entire blame upon himself, but he did represent to you that the failure——

A. Well, he placed the particular blame on the fear among the employees in the plant about signing a union card. That is where he placed the blame.

Q. Well, I would expect him to report that to you, but now I am going to try to get back again to the question of the effect of the Pioneer Electric payroll. It is a matter of fact, that you found after you got back that he had gone into the 1944 proceedings without having any representation there on that payroll, did you not?

A. I don't know.

Mr. Tyre: Just one minute. Mr. Examiner, I think it has been clearly shown now by the answers this witness has had to give to these questions that he does not know the answers. When we have him tell what he knows and what he surmises by what was told to him by somebody else who was right on the job, I think we are wasting a lot of time, Mr. Examiner, by continuing this line of examination of this particular witness.

Trial Examiner Kent: I think so. I think this ought [808] to be put in by the best information which is possible.

Mr. Schullman: May I support the position? I think it is very important, for this reason: Under

(Testimony of John Despol.)

the present certification—I do think, your Honor, that the testimony is material and relevant.

Trial Examiner Kent: It may be for some purposes, but it would be entitled to much more consideration if given by a witness who knew the circumstances.

Mr. Schullman: This witness has already testified he can only tell what he knows. If he doesn't know, he can refer to this other witness. I don't think he should be limited as to matters he knows.

Mr. Garrett: I would like to discontinue this line of questioning at the moment, although I understand I am not entirely precluded from continuing at some later point in the cross-examination.

Trial Examiner Kent: You may.

Q. (By Mr. Garrett): Have you seen this tract that has been marked Respondent's Exhibit 3, a mimeographed sheet consisting of one page?

A. Yes.

Q. I don't know whether you wrote that or not. I don't know whether you are a literary man or just a man of action. Do you recall when you first saw it?

A. I think the first time I read it was when Mr. Collins [809] presented it to me yesterday.

Q. You didn't know about its issuance at the time it was issued sometime in February or March, 1946?

A. I know that bulletins have been issued at regular intervals by Mr. Coville of the local union. On occasions I have read some of them, and other times

(Testimony of John Despol.)

I haven't had the time to keep up with his literary activities, as you put it.

Q. You exercise the general supervision of those publications and try to keep familiar with their contents?

A. Well, I couldn't call it supervision. Mr. Coville is subject to the local union. I attempt to keep familiar with contents of all bulletins of the union or individuals connected with the union.

Q. That was a publication, I take it, of the local union, referring to Respondent's Exhibit 3?

A. Yes, by a representative of the local union.

Q. Put out by a representative of the local union; is that correct? A. That is correct.

Q. Who would be the responsible officer of the local union who was responsible for such publications?

A. Mr. Coville, the organizer for the local union.

Q. How do you spell his name?

A. C-o-v-i-l-l-e.

Q. Now, you will notice that Respondent's Exhibit 3, which [810] you have before you, in the paragraph which is bracketed in red refers to the institution of the Pioneer Electric Company as a scheme to escape income taxes.

Mr. Nicoson: I object to that as not being a correct statement of the document. [811]

Q. (By Mr. Garrett): Well, just read it to me, that bracketed part. I will withdraw the question. Read me that bracketed paragraph.

Mr. Nicoson: I object to that.

(Testimony of John Despol.)

Mr. Garrett: I will read it to him then, as you prefer. I will withdraw the question.

Q. (By Mr. Garrett): Now, this bracketed section reads:

“The purposes of the change in operation had nothing to do with your union activities. It has been done to avoid tax payments and to get higher prices from the O.P.A.”

That is a correct reading of the paragraph as it appears in Respondent's Exhibit 3; is it not?

A. Yes.

Q. Now, does that coincide with your opinion as to the reason for the operation of the Pioneer Electric Company?

Mr. Tyre: I object. It calls for a conclusion. That is one of the very issues before the Board to decide. I don't think this witness is a competent witness.

Trial Examiner Kent: Objection sustained.

Mr. Garrett: All right.

Q. (By Mr. Garrett): You knew at the time of the election that the Pioneer Electric Company had been in existence at least as early as the early part of 1944; did you not? A. Yes. [812]

Q. As a matter of fact, you learned at that time that the Pioneer Electric Company had been in existence since some time prior to 1944; did you not? A. Yes.

Q. Did you regard it as having been at that time a legitimate production operation or merely a scheme to escape taxes?

(Testimony of John Despol.)

Mr. Tyre: I object to that as it calls for the conclusion of the witness as to what he thought it was in 1944 or any time earlier than that.

Mr. Nicoson: I join in the objection.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): You knew, did you not, that the rate of taxes throughout the war on corporation incomes was very high?

Mr. Nicoson: Objected to as immaterial. Objected to as being beyond any qualifications as shown by the witness to know any such thing. I submit the best evidence of that is the Internal Revenue's records themselves.

Mr. Garrett: I am going to argue against that objection, if I may, if your Honor will hear me.

Trial Examiner Kent: Very well. What is it?

Mr. Garrett: In order to apprise the witness of the direction of my intentions I will say that it may become material to whoever reviews and makes the decision in this case to know why Mr. Despol, after the occurrence in 1944, [813] permitted the Pioneer Electric Company, in his organizational efforts and his petitions for representation to this Board in 1945—that is particularly true in view of the fact, as has been stated here, a number of times by both the Board's attorney and the Trial Examiner—the alter ego theory is suggested by the complaint itself.

I expect to show by this and other questions addressed to this witness that this witness has had

(Testimony of John Despol.)

for a matter of pretty nearly 10 years a very wide familiarity with all factors involving the production and fabrications of metals in this area.

I expect to show that this witness knows, because the thing has happened in many, many operations where he and his organization enjoy representation and representation rights, that many co-partnerships were filed during the past four or five years, and mainly after the beginning of our participation in the war, and engaged throughout that period and are engaging in legitimate production activities in connection with which they had legitimate payroll and legitimate payroll problems and legitimate labor relations problems, without being in any sense the alter egos of the original enterprise from which they, or in connection with which they were informed.

I think I will be able to elicit from this witness to show he has a wide knowledge of the circumstances relating [814] to the formation of such a partnership. In that connection I will mention the the necessity—sometimes a legal necessity—for the separation of contracts; a legal necessity for forming operations to do business in fields not covered in original articles of incorporation, as well as the tax situations arising out of the high income taxes and surtaxes, which adversely affected the corporate enterprises, as compared with co-partnerships, particularly in this state where we have community property, as your Honor probably will understand.

Now, if all those things are true and this witness

(Testimony of John Despol.)

knows this, which I think he does, I think it is legitimate for me to inquire into the causes and the basis which led him to ignore the admitted and known existence of this co-partnership enterprise, both in his organizational activities and his petitions directed to the Board.

The Witness: I never ignored it. I could never find it.

Mr. Garrett: In other words, putting it in plain language, on the one hand it may be material if he knew about that enterprise and merely inadvertently forgot. It is material if his responses show that he intentionally ignored it.

Mr. Nicoson: I restate my objection to the question as it is framed, and I submit all this argument he has given us just remotely touches the question and the objection which I [815] made.

I don't know whether he can prove all these things with the witness or not. I will meet him on those subjects if he attempts to do it, because, I submit, I will tell him frankly I think it is immaterial to this proceeding as to the broad general knowledge of this witness.

I don't think we can inquire into his entire scholastic background and all the contracts he has been in in the 10 years he has been in the labor movement, and the speeches he has made and the speeches he has heard and all the other things that have come into his knowledge in the period of 10 years; it certainly can't all be material to this case.

I have no objection to his going into matters here

(Testimony of John Despol.)

which, in some wise, touch upon the issues involved here, but I certainly do object to any broad examination such as has been indicated at this time. I also will reiterate that the statement Mr. Garrett has just made—and he asked to be heard before you ruled on the objection—is about as remote from the question that I objected to as it can possibly be.

I restate my objection. It is incompetent, irrelevant and it is beyond the comprehension of this witness. Further, the income tax records of the Internal Revenue are the best evidence as to this broad tax problem that he is trying to question this witness about. [816]

Trial Examiner Kent: I think I would be inclined to limit it to his knowledge, the co-existence of the two businesses. Generally, your argument followed through to its logical conclusion would seem to indicate that you expected to carry along the line that would call for his giving a lot of legal conclusions. I don't see how I can accept them from a lay witness. I think most of the matter you want to bring in will probably come in through the respondent's case when he shows, by witnesses who are familiar with the facts and can definitely testify, as to just what the financial set-up was, just what was done, just what was done in the shift of operations from one organization to the other.

This witness couldn't possibly know those things. He would be simply guessing at it. I think we would have a distorted record we couldn't base any sound findings on.

(Testimony of John Despol.)

I do think that matter is material, but I think it best come in through the respondent's witnesses who definitely know what the situation is.

Mr. Schullman: Except you have this added factor, that while it is true the respondents will establish the physical facts concerned in the two companies, from which this Trial Examiner and the Board will adduce the legal conclusions, yet if you have a history of procedure in 1944 election, in which the same union participated, to wit, the United Steelworkers, in which, for the failure to include the [817] payroll of Pioneer, apparently the petition was dismissed.

This witness, as the head of the United Steelworkers in this area, is visited with knowledge of a physical fact. I think it is pertinent to find out the basis for the motion.

The Witness: Except we could not find any employees of Pioneer Electric to sign up in the fall of 1945. If there had been any we would have attempted to sign them up.

Mr. Garrett: I will try to limit myself according to the Trial Examiner.

Mr. Schullman: I think it is very material. It may resolve this whole case. For instance, the United Steelworkers——

Trial Examiner Kent: I think the only substantial facts would necessarily have to come from respondent's witnesses, who know the facts. Then I think we could rely upon that. But where we would be just attempting to get in a lot of hearsay

(Testimony of John Despol.)

testimony that isn't material—the testimony now shows the witness has some general knowledge of the existence of the Pioneer Electric back in 1944, and it is his belief that the operation substantially ceased at or about V-J Day.

Those may not be the facts. I think the respondent would have the actual facts, facts we could rely on. I think we had better put it in that way, rather than going on a fishing expedition to see what he knows. It is still possible for the Board to probably dig up some witnesses to rebut some of those facts; it would be a difficult matter. It would [818] seem to me matters peculiarly within the knowledge of the respondent's witnesses. You are trying to get now a long-winded cross-examination I don't think you could rely on. The man would be necessarily guessing in giving testimony on it.

I can't conceive of how he would know all the intimate details of all the business set-up of those two organizations.

Q. (By Mr. Garrett): Would it be fair to put it in this way, Mr. Despol: Your organizing campaign in 1945 did not reveal to you the presence of any Pioneer Electric employees; is that right?

A. That is absolutely correct.

Q. And at the same time nobody, except perhaps your own people, had represented to you there weren't any?

Mr. Nicoson: I think I am going to object to that as being—withdraw it.

(Testimony of John Despol.)

The Witness: I have already testified to that question.

Mr. Nicoson: I think that is right. I think he has answered the question. It is just the same question with a new coat on.

Q. (By Mr. Garrett): Well, let's put it this way: Nobody had represented to you that the Pioneer Electric Company, as a partnership or corporation, or whatever it was, had been wound up, dissolved or terminated; is that correct? [819]

A. I think I have already answered that question.

Trial Examiner Kent: You might answer it, if you can.

Q. (By Mr. Garrett): Do you want the question read?

The Witness: I had previously testified I discussed the question of Pioneer Electric with some of the employees, and there was no indication in my conversations with them that Pioneer Electric Company still existed.

Q. (By Mr. Garrett): I see.

A. That it was a wartime operation in that plant.

Q. Now, conversely, had anyone represented to you that Pioneer Electric Company did not still exist?

A. I am sorry. I don't know the answer to that question.

Q. Well, you see——

A. I don't recall.

Q. You can answer this quite clearly if we get a mutual understanding on it. You have testified

(Testimony of John Despol.)

in your conversations with employees no one gave you any indication, no affirmative indication that the Pioneer Electric Company still existed. You have testified to that; haven't you? A. Yes.

Q. Is that right? A. Yes.

Q. Now I am asking you the converse of that question. Did anybody in any of those conversations or in any other conversations give you any representation that Pioneer Electric [820] did not still exist?

A. I don't think I can answer that question, except to refer you to my previous testimony and to say that in—none of the agents or representatives of the Steelworkers Union were able to find anyone going in and out of the gate to O'Keefe and Merritt to work for anyone except O'Keefe and Merritt.

Q. And you based your organizing campaign and your R petition upon that information and upon nothing else?

A. And upon live and existing workers who were organizing, not ideological characters.

Q. And you did not make any further inquiry besides what you have told us on that subject?

A. That is correct.

Q. Will you tell me whether or not you know whether anyone on the Pioneer Electric Company payroll was permitted to participate in the N.L.R.B. election which took place in November, 1945?

Mr. Nicoson: Object to that first, it is immaterial, and second, it could only be hearsay, and further, it is not the best evidence.

(Testimony of John Despol.)

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): How did you obtain that evidence of representation for the 1945 N.L.R.B. election, in what way was that evidence prepared and obtained by the Steelworkers? [821]

Mr. Nicoson: Objected to as immaterial.

Mr. Garrett: That is a preliminary question.

Mr. Nicoson: Even so it is immaterial.

Mr. Garrett: I didn't ask him what the methods were. I will withdraw the question.

Q. (By Mr. Garrett): Did you obtain your information of representation for the 1945 N.L.R.B. election by having signatures made on cards?

A. Yes.

Q. Was that a regular form put out by the local union for the United Steelworkers?

A. It was one of our regular forms. There are several we used.

Q. Was it a power for bargaining or a membership application blank?

Mr. Nicoson: I object to that. The card would be the best evidence; further, on the ground it is immaterial.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): All right. In the cards that you circulated for signatures within the plant, was there a place for the signer to write in the name of the organization by which he was—I mean the employer by which he was employed?

(Testimony of John Despol.)

Mr. Nicoson: Objected to as assuming a fact not in evidence, that they were circulated in the plant. We certainly do not concede they were, and there is no evidence in this [822] record to show that they were.

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right.

Q. (By Mr. Garrett): On the cards which were circulated, was there a place for the signature of the signer?

Mr. Nicoson: Objected to as not being the best evidence and upon the further ground that it is immaterial.

Mr. Garrett: I can't present the best evidence. The N.L.R.B. has them, and they are not public records.

Mr. Nicoson: You could present a facsimile of the card.

Trial Examiner Kent: Isn't it against public policy to inquire into those things anyway? I will sustain the objection.

Q. (By Mr. Garrett): All I wanted, before you had the election in 1945 you had to convince the Board you had some members or supporters in the plant involved, didn't you?

A. That is correct.

Q. And you did not expect the Board to take your word for it, but you presented documentary evidence?

A. That is correct.

Q. And the documentary evidence was in the

(Testimony of John Despol.)

form of some sort of a written expression signed by the individual employee, was it not?

A. That is correct. [823]

Q. And I think you told me you used several forms?

A. That is correct.

Q. On which to obtain that expression of support or application for membership or whatever it was?

A. That is correct.

Q. Were those forms substantially identical or similar?

A. They were similar in respect to bargaining authorization.

Q. They all had bargaining authorizations running to the C.I.O. local union?

Mr. Nicoson: Objected to as not being the best evidence, and immaterial.

Trial Examiner Kent: I will sustain the objection, I think, on the ground it is immaterial, if he is restricted to getting the best evidence, obviously it seems to me—I sustain the objection on that ground.

Q. (By Mr. Garrett): Did these cards that were circulated and signed have a place on all of them for the signer to write in the name of his employer?

Mr. Nicoson: Objected to as immaterial and not being the best evidence.

Trial Examiner Kent: Sustain the objection.

Mr. Nicoson: And also as having been asked and answered.

Mr. Garrett: Now I ask Mr. Nicoson in view of

(Testimony of John Despol.)

the fact that he has managed to get that objection sustained, to produce all cards filed by the [824] C.I.O. or other evidence of representation in support of the representation petition filed by the C.I.O. at the O'Keefe and Merritt plant in 1945.

Mr. Nicoson: Mr. Garrett knows very well that I can't make that production. He has already stated as a fact and I concede it to be so, that those cards are received in confidence and they are held by the Board in confidence, and they are not shown to anyone except the Board agent and to the person who brings them in here. Mr. Garrett knows that and knows that I can't produce them under those circumstances. [825]

Mr. Garrett: He is here and I am trying to get the facts from him respecting this matter by proper testimony of a man who knows. I am trying to ask the man under whose supervision they were circulated. Then he objects that that is not the best evidence, and I ask for the best evidence and he says that he has got that and he won't show it to me.

Mr. Nicoson: He knows that I can't show them to him. He would be the first guy to scream to the top of this building if I put in such a practice around this office. What I have been trying to show to your Honor, he has been asking the substance of a written document. He knows as a lawyer that the best evidence is the production of those documents. All he has got to do is to ask this witness to produce the documents or facsimiles

(Testimony of John Despol.)

or copies, like we have done with the Machinists on these matters, and I have no objection to that action, but I certainly do object and I am not going to be a party to revealing any names of anybody who signed any union card in this proceeding, and he knows that very, very well.

Mr. Garrett: I do not withdraw my question and I stand on my demand.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: To which ruling I except. [826]

Trial Examiner Kent: I think we are probably wasting a good deal of time. There has been an election and a certification. Why isn't the certification the answer on this particular line of inquiry?

There is another phase of the case, of course, now, I think, that the identity of interests, of the partnership, that will largely be determined on some evidence that is in now and other evidence that may come in through the respondent's case or possibly the Board may put some additional evidence of that sort in prior to the respondent putting in its case.

Mr. Garrett: I am going to try to school myself not to argue with or after the Trial Examiner's ruling. I always try to take the ruling and abide by it. Since your Honor has made that observa-

(Testimony of John Despol.)

tion, I will just ask one question which I think will show whether or not my question was pertinent. I have a right to ask this Trial Examiner to believe that I am asking them in good faith.

Trial Examiner Kent: Oh, yes, I assume that.

Mr. Garrett: That question I will ask your Honor is this; and I am not sufficiently inured to appearing before the National Labor Relations Board to run around making offers of proof which are unsubstantiated, and offers of proof are made much more lightly here than they are in the courts, so without representing to your Honor what this witness would testify in response to last question to which [827] objection was sustained and the questions which would logically follow it, I will ask your Honor what your Honor would think if that question were allowed and this witness testified that he received several hundred of these cards and that 50 or 60 or 70 of them gave the name of Pioneer Electric Company as the employer.

Trial Examiner Kent: Well, I will permit you to ask the question in this form: Did any of the cards contain an entry by some of the signatories endorsed thereon that they were employees of the Pioneer Electric?

Q. (By Mr. Garrett): Will you answer the question as propounded by the Trial Examiner?

Mr. Nicoson: I would not object to that.

Mr. Tyre: I would, on the ground it is immaterial, but just to save time——

(Testimony of John Despol.)

Mr. Garrett: No one can say the witness is not forewarned.

Mr. Tyre: Both ways.

The Witness: There were no cards, to my knowledge, in which the employee indicated that he was an employee of the Pioneer Electric.

Mr. Garrett: That is right.

Q. (By Mr. Garrett): Now, all we want to do is just check that. There were no cards bearing such indication, to your knowledge? Did you look at the cards yourself? [828] A. Most of them.

Q. Was that part of your duty as an international organizer for the United Steelworkers, to handle those cards, or were they handled by the local union?

Mr. Nicoson: I object to that as immaterial, whether it was a part of his duty or it was not, he did see the cards and he reported what he saw. What more do you want?

Trial Examiner Kent: I think that a material element.

Q. (By Mr. Garrett): I say, was it part of your duties as an International man, to handle those cards and check them?

A. Well, I signed up some of the cards myself. Some were signed up by the local union representative or by other International representatives, and when I brought the cards down to the Board I went over the cards myself, ran through them rapidly.

Q. You ran through the cards you brought down

(Testimony of John Despol.)

to the Board, is that correct? Now, with respect to the cards that were signed, you think you saw most of them, is that correct?

A. Well, I ran through them all when I went down to the meeting, and we took all the cards we had at that particular time to the Board.

Q. Well, you checked every one at that time to make sure that none of them gave the Pioneer Electric as the employer?

Mr. Nicoson: I object to that as not being the correct statement of the witness' testimony, assuming a fact not in [829] evidence. He did not say he checked every one. He said he checked most of them.

Q. (By Mr. Garrett): All right. Now, with respect to other cards which might have been signed and not brought up and presented to the Board, you would not have seen them, would you?

A. No, but I am sure that if any card had been signed which had on it the name Pioneer Electric Company that Mr. Colville, Mr. Conway, Mr. Anaya, or any other representative of the local or international union would have brought it to my attention. They should have.

Mr. Garrett: I move to strike that answer as non-responsive, and have the question read to the witness.

Mr. Nicoson: I object to its being stricken. I submit it is responsive and it is exactly what he asked for.

(Testimony of John Despol.)

Trial Examiner Kent: I think the answer is generally responsive. The answer may remain.

Mr. Garrett: I move to strike it on the ground now that it represents a conclusion of the witness.

Trial Examiner Kent: It represents what?

Mr. Garrett: A conclusion.

Mr. Nicoson: I oppose that on the same ground.

Mr. Schullman: You mean it represents a conclusion, counsel?

Trial Examiner Kent: The objection goes to the weight [830] rather than anything else. The record will remain.

Q. (By Mr. Garrett): Were you ever inside the plant prior to the election?

Mr. Nicoson: I am sorry. I didn't get that question, please.

Mr. Garrett: Were you ever inside the plant prior to the election?

The Witness: Only at the time I was fingerprinted several years before.

Q. (By Mr. Garrett): No other occasions?

A. No other occasions. Well, before that I—no. I was going to say the time I cleared up the question with the Army with respect to solicitation and delivering literature and so on. I think that was simply done with the guard at the door or the gate or the door there, the office, right at the door, but not inside the plant proper, that is for sure.

Mr. Garrett: May I see the contract which is in

(Testimony of John Despol.)

evidence, the C.I.O. contract, Board's Exhibit 10?

Q. (By Mr. Garrett): This contract, I notice, is on mimeographed sheets. Was this contract mimemographed particularly for presentation to this employer, or is it a general form?

A. It is in general form, but the particular subject matters that were combined to make that particular contract were voted on by members of our union employed at O'Keefe and Merritt at a [831] special meeting called for that purpose.

Q. So that in part this contract contains your general provisions that are general to them?

A. The language is more or less standard in respect to procedural and policy matters of the contract.

Q. I notice that some of these pages are keyed, that is, they have a key number in the upper right-hand corner. Do you pursue the system of having various standard provisions mimeographed so that they can be assembled into a contract for special occasions?

A. That is correct.

Q. The United Steelworkers have a number of written contracts with employers in this area, have they not?

A. They do.

Q. And had at the time of this contract, Board's 10, a number of written contracts with other employers in this area?

A. Yes.

Q. Several hundred, I should say, probably? Would that be a fair statement?

A. No.

(Testimony of John Despol.)

Q. More than a hundred, anyway, perhaps?

A. If you define in this area as Los Angeles, it would be less than a hundred.

Q. But still a substantial number, correct?

A. Yes. [832]

Q. And many of them have been formed by assembly of these mimeographed sections such as I now am paging before me in Board's Exhibit 10, is that correct?

A. Some of them have.

Q. Some of your contracts presently in effect and in effect at the time you presented Board's 10 to the company for the first time have clauses in them providing that in the event of a sale or other succession to the employers' business, the contract shall continue in effect between the labor organization and the successor or new employer. That is a fact, is it not?

A. I don't believe we have any contract that has that provision in it locally.

Q. Would you say you have not?

A. Well, there may be one or two exceptions. There may be one or two exceptions I do not recall at the moment, but I can think of no particular contracts that have a successor's clause in respect to companies.

Mr. Schullman: It wouldn't be good if you had, anyway.

Q. (By Mr. Garrett): So that the omission of such a clause in this proposed clause has no particular significance in your mind?

(Testimony of John Despol.)

Mr. Nicoson: Just a moment. Let me have that question again.

(The question was read.) [833]

Mr. Nicoson: I think that assumes a fact not in evidence, and it is not an omission. The witness' testimony is that he does not recall it was in any of those contracts. I object to it on that ground.

Mr. Tyre: I object to it on the further ground that it calls for the state of mind of the witness, which state of mind, so far as I can see, has no materiality to the issues in this case.

Mr. Nicoson: And on the further ground it is argumentative.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: The answer may be taken. You may answer it.

The Witness: Well, I would not characterize it as an omission.

Q. (By Mr. Garrett): It is not here, though, is it?

Mr. Tyre: I object to that. The exhibit speaks for itself.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): You knew at the time you presented this contract that it did not contain any provision relating to the sale of or succession to the business, did you not?

Mr. Tyre: Objected to on the same grounds.

Trial Examiner Kent: Objection sustained. [834]

Mr. Nicoson: Objection on the same grounds

(Testimony of John Despol.)

previously stated and on the further ground it is immaterial.

Q. (By Mr. Garrett): I notice that you provide in this proposed agreement, which is Respondent's Exhibit 10, for——

Mr. Nicoson: Board's 10.

Q. (By Mr. Garrett): ——Board's 10, for adjustment of wages in the event of certain occurrences that might take place after the agreement is signed. A. That is correct.

Q. You anticipated that there might be such a change in conditions as would require you to protect against it in your contract, is that correct?

A. No, the clause that you refer to provides that when a new classification or occupation or trade comes into the plant, it provides the procedure to decide the rate for the new classification, occupation or procedure, or where the job content of an old job classification whose rate is set at the time of the execution of that contract, where such job content is substantially changed to either increase or decrease the value of that job, there is the procedure set-up for re-determining the valuation of that job in line with the rate structure for the entire plant.

Q. There are no wage scales attached to this contract. Were any wage scales proposed to be incorporated in the contract ever presented to anyone in writing? [835]

A. Our wage proposal was to increase the exist-

(Testimony of John Despol.)

ing rates 25 cents a hour, and then to attach those rates to the contract.

Q. Was that proposal made orally?

A. In writing, in the contract.

Q. I am going to read you from the section on the fifth sheet on Board's Exhibit 10 designated by the capital letter B and headed "rate establishment and adjustment." [836]

Mr. Tyre: Which page is that on?

Mr. Garrett: Page 5. The pages are not numbered, but it is the 5th sheet.

Q. (By Mr. Garrett): "B. Rate establishment and adjustment. It is recognized that changing conditions and circumstances may from time to time require installation of new wage rates."

Do you mean that to apply only to new jobs or classifications, or is that to have general application to the entire wage scale?

A. It applies only to new jobs, new classifications, or to where the job content of an old job classification is substantially changed. It does not pertain to any job classification or any job rate where there is no substantial change in job content and the rate has been set by the institution of the contract or the rate of the individual.

Q. Did you ever propose to anybody that the Pioneer Electric Company be made a party to any contract?

A. No.

Q. Did you ever propose to anybody in connection with the negotiations you have testified to here that in any contract arrived at there be incorporated

(Testimony of John Despol.)

provisions which would cover Pioneer Electric employees? A. No.

Q. Did you ever inquire of anybody in the year 1945 besides your own members as to the then status of the Pioneer Electric Company? [837]

Mr. Nicoson: I object to that.

The Witness: I believe I testified to that.

Mr. Nicoson: I object to that, Mr. Examiner. He is starting back over that ground now. I object to all that.

Trial Examiner Kent: Read the question.

(Question read.)

Trial Examiner Kent: That is purely repetitious. We had an answer to that earlier in your examination.

Mr. Garrett: Sustained?

Trial Examiner Kent: I say that is purely repetitious. You took the answer earlier in your examination.

Mr. Garrett: I take it the objection is sustained.

Trial Examiner Kent: How is that?

Mr. Garrett: I take it the objection is sustained?

Trial Examiner Kent: The objection is sustained.

Q. (By Mr. Garrett): Did you ever propose to anybody, in connection with any contract, the inclusion of a clause which would protect the union in the event of a change in the ownership of the business? A. To any company?

Q. Yes. A. No.

Q. That goes for the entire year 1945?

(Testimony of John Despol.)

A. I would say that is correct. [838]

Q. Did you ever try to make a contract with anyone in the negotiations that you have testified to here that would go beyond the scope of the bargaining unit obtained in the ascertainment of representation as a result of the N.L.R.B. election in the O'Keefe and Merritt matter in November, 1945?

Mr. Tyre: I object to that. That calls for a conclusion. The question of what the certification covered, I believe, is one of the matters which is now before this Board. I don't think any answer this witness could give, as to what he thought that certification was or whether or not he asked for a unit bigger or smaller than that certification is material, nor would the answer be a competent one given by the witness. That is a matter I think, your Honor, for the Board to determine.

Mr. Garrett: The reason I asked that question—I don't want to argue it—is contained in the first page of the proposed agreement, Board's 10, Section 1, A.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: I think I have no further questions to direct to this witness. I would appreciate, however, before he leaves the stand if we might have the afternoon recess at this time, as I would like to run over my notes.

Trial Examiner Kent: We will take a five-minute recess.

(Short recess taken.)

(Testimony of John Despol.)

Trial Examiner Kent: On the record. [839]

Q. (By Mr. Garrett): During the recess, Mr. Despol, have you had an opportunity to look at the original R petition in Case No. 21-R-2298?

A. Yes.

Q. As being the R petition filed in the case by the Steelworkers C.I.O. union in 1944?

A. I have.

Q. It is a fact, is it not, that the employer mentioned there was O'Keefe and Merritt Company?

A. That is correct.

Q. And that the unit petitioned for was all production and maintenance employees? A. Yes.

Q. Is that correct? A. That is correct.

Q. And that no other labor organizations were named by the C.I.O. as being interested in the event of that proceeding? A. That is correct.

Q. Now, I think you told me during the recess you had a correction to make in your former testimony on cross-examination, before the recess.

A. During the recess I talked with Mr. Conway and Mr. Anaya, both of whom were present and represented our union at the hearing in 1944, and both of them tell me I am in error with respect to Pioneer Electric, that that was—Mr. Conway [840] said it was some trucking company whose payrolls possibly were involved in the eligible employees. Mr. Anaya said one of the reasons why we did not secure an election order at that time was because a large number of employees had been laid off just prior to the hearing in which the payroll was produced,

(Testimony of John Despol.)

and therefore those names did not appear on the company payroll. That was the primary reason for our failure to secure a Board order of election.

So apparently I misunderstood Mr. Anaya's brief conversation with me in an automobile when I returned from Washington. I thought he was talking about the same company.

Mr. Garrett: No further questions.

Mr. Schullman: On behalf of Local 792 no cross-examination.

However, I did wish to now make a motion to strike the testimony of this witness insofar as it may attempt to relate to Local 792, for the reasons that it is immaterial, incompetent, irrelevant; doesn't tend to prove or disprove any of the issues in respect to Local 792. I make that motion first.

I would also like to make a motion—I don't think my associates made it in my absence—to strike Board's Exhibit No. 10, the C.I.O. contract, for the same reasons, on behalf of Local 792, and all the grounds heretofore given.

The Witness: I would like to also correct my testimony [841] in respect to one question Mr. Garrett asked me.

Mr. Garrett: Go right ahead.

Trial Examiner Kent: I will reserve ruling on the motion, pending consideration of the entire record.

Mr. Garrett: You had another correction, Mr. Despol?

(Testimony of John Despol.)

The Witness: Yes. On the question you asked me of whether or not we ever attempted to bargain for employees of Pioneer Electric, in view of the dubious status——

Mr. Garrett: Just a moment. Did I ask you that question? I asked you a number of questions relating to whether or not you attempted to have them included in any contract or attempted to have any succession clauses put in. I don't think I ever asked you whether you attempted to bargain for the Pioneer Electric employees. If you are in accordance with me, in agreeing on that, I think it would be more proper for Mr. Nicoson to bring out the matter that you are now attempting to relate. If you think I did ask you whether you ever attempted to bargain for Pioneer Electric employees——

The Witness: I am referring to the contract question. Your specific point on the contract was that when Mr. Collins called me on the telephone, after our meeting at the second meeting, at the cocktail bar, and again stating his offer was still open, I told him at that time it was still——our answer was still no. And that we were only interested [842] in securing a contract for the employees at the O'Keefe and Merritt Company.

He said, "Well, we have no employees." I said, "Well, the employees working at that plant, whoever they may be employed by or whatever may be the dubious status of the Pioneer Electric, to that extent that is our position, that the contract covers

(Testimony of John Despol.)

the employees of Pioneer Electric, if that is the status."

Mr. Garrett: No further questions.

Mr. Reed: On behalf of the International Association of Machinists, inasmuch as the testimony of the witness has no bearing upon the legality of our contract presently in existence with the Pioneer Electric Company, on the basis that that determination of legality would be made as to whether or not the Pioneer Electric Company is a separate identity from O'Keefe and Merritt, and that that fact alone will, we believe, be the deciding factor as to whether our contract is legal, we have no cross-examination.

Cross-Examination

By Mr. Tyre:

Q. Mr. Despol, you testified, I believe, to questions from Mr. Collins either yesterday or this morning concerning the second meeting that you had with him at Carl's Restaurant at Olympic and Soto. In your testimony you stated that Mr. Conway asked Mr. Collins, after Mr. Collins had offered this money, how you could [843] accept that money and still save face.

A. How he accept that money and still save face?

Q. Yes. My recollection of the testimony at that point, as to what Mr. Collins replied to that question by Mr. Conway, is a little vague. I wish you would clarify that for us.

Mr. Garrett: Counsel's recollection is no——

(Testimony of John Despol.)

Q. (By Mr. Tyre): Also, I think the record is ambiguous on that point.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Kent: You may answer.

The Witness: Mr. Conway asked the question how could we do it and still save face?

Mr. Collins replied that we could confine our activity to filing unfair labor practice and to agreeing to a Labor Board election and going down in a blaze of glory, I think is the phrase he used, and cease any other organizational activities or any economic pressure that the steel workers union might possibly exert then or in the future; cease and desist all the union activity.

Q. (By Mr. Tyre): Did Mr. Conway make any reply to that remark concerning the unfair labor practice charge?

A. Oh, yes. My Conway then said, well, eventually a Board order would come out directing the company to cease [844] and desist against unfair labor practices and wouldn't he be right back where he started, namely, Mr. Collins, and the company.

Mr. Collins said that he wasn't worried about that, that that would take a matter of a couple of years, and that in the absence of activity by ourselves there would be no organization of the Steel Workers union in that plant.

Q. Did he mention anything about the courts at that time?

A. He stated that he would see to it that the

(Testimony of John Despol.)

matter went all the way through the courts of our country, in respect to the enforcement of the Board order.

Q. I think you testified that Mr. Collins also stated at that second meeting at the bar at Carl's at one point that he was willing to raise his offer to \$1500.00. Could you repeat to us, as well as you remember, the exact language that Mr. Collins used when he made that statement?

A. He said, "I can let you have \$1,000.00 or \$1500.00 for your trouble." I will correct that. He said, "I could let you have \$1500.00."

That was after he had repeated his offer of \$1,000.00.

Q. Did you ever tell Mr. Collins how much money the union had put out for its organizational expenses in this campaign at O'Keefe and Merritt?

A. No. In fact, I don't ever attempt to estimate it myself, much less to say it to anyone else. [845]

Q. By the way, Mr. Despol, do you get time and a half or any other premium when you work after 4:30?

A. No, but I wish I did. I need a bargaining agency on that point.

Q. What do you consider to be your working hours when you are working on the payroll of the International Union?

A. Any hour of the day or night has been my experience, subject to working for the union in an official capacity.

Q. I think you testified to a question by Mr.

(Testimony of John Despol.)

Collins that it was true he does sometimes drink double Scotches and water.

Do you recall whether or not on this particular occasion, that is, at the second meeting at Carl's bar, whether or not he was drinking double or single Scotches?

A. I don't recall whether he was drinking double or single at the second meeting. I do definitely recall he was drinking double Scotches at the first meeting.

Q. Is that clause of the proposed contract, which you made to Mr. Collins concerning new rates for old jobs and new rates for new jobs not already in the plant when the contract is made, a standard clause for your Union?

A. It is a standard clause for our Union. In fact, it first originated with the basic steel contracts in 1937. Then it was subsequently substantially modified by the decision of the National War Labor Board in the so-called basic steel case in which its present form is as presented to [846] this particular company. And for that matter, with all other companies that we have dealings with.

I may say that Mr. Lund, who is in the audience and myself, may both qualify as lay experts on that particular question. It has been argued very vigorously on every negotiations we have had.

Mr. Tyre: No further questions.

(Testimony of John Despol.)

Redirect Examination

By Mr. Nicoson:

Q. Was it at the first or second meeting at the bar that the question of you being young fellows occurred? Do you recall that part of the testimony?

A. Yes. Mr. Collins, when he told the story of this old time A.F.L. business agent, who, according to his statement, was thrown on the trash heap by his international union, he stated as we were young fellows we ought to look out after ourselves and be less concerned about the international union.

Q. At which session was it?

A. At the second session.

Q. That is when Mr. Conway was there?

A. When Mr. Conway was present, when he said young fellows. He was referring to Mr. Conway, who is older than myself, and myself.

Q. Was it after this the question of the \$1,000.00 and \$1500.00 came up? Is that correct?

A. Yes. [847]

Mr. Nicoson: No further questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Nicoson: At this time, if your Honor please, pursuant to stipulation which we entered into yesterday I have had copied the memo of Mrs. Phoenix, which we reserved in the record as Board's Exhibit 9. I ask they be marked and received as part of the record, pursuant to that stipulation.

Trial Examiner Kent: The prepared copies may be received in lieu of the original.

(Thereupon, the document heretofore marked Board's Exhibit No. 9 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 9

(Copy)

Re: O'Keefe & Merritt Co.

Case No. 21-R-3101

MEMO

11-5-45:

A conference was held today on the above case. Those present were Mr. John D. Roberts of the Stove Mounters, Nick Cordil of the Carpenters, W. T. Blaney of the Teamsters, Cecil Collins, Attorney, and F. F. Rotten, Personnel Manager for the Company, and John Despol and Gilbert Anaya and G. J. Conway for the Steel Workers.

Roberts stated that Lazarini of the Molders intended to intervene for the foundry workers. Lazarini was not present, however and has not communicated with me.

Cordil wishes to represent the carpenters, millwrights, graders, woodworkers and construction maintenance men. It appears that there are 14 carpenters and 7 or 8 millwrights employed by the Company at the present time. The carpenters' location is physically separated from the rest of the shop, although under the same roof, by a partition. One-third of the carpenters work in this shop and the rest work throughout the plant doing maintenance work. They are headed by a craft foreman who reports to the assistant plant superintendent.

There are no graders or wood workers at the present time. There is one millwright sub-foreman who has three men under him and reports to the assistant superintendent. This group does general work throughout the factory, repairing pipe and doing all-around machinery maintenance. The other millwrights, of which there are approximately 4, report to the toolroom foreman who in turn reports to the assistant plant superintendent. The work of these millwrights is confined to drill presses and punch presses. They have little or not contact with the other millwrights and most of their contact would be with punch press and drill press operators. Cordil submitted 23 cards.

The Teamsters' representative, Mr. Blaney, did not produce any showing of interest and was told that he had until Thursday to bring his interest in. All but two of the Company's truck drivers are at present on the Company payroll. The other truck drivers are carried on the payroll of another company but when O'Keefe & Merritt goes back into full production these truck drivers will be added to their payroll. Beside the truck drivers Blaney wishes to represent five of the warehouse employees. There are approximately four people working there now with an anticipated 12 people by the first of the year. The shipping department is in the warehouse. There is a separate foreman for the warehouse who reports to the plant superintendent. The warehouse is under the same roof as the other units and is not physically separated.

The CIO is interested in the warehousemen but wish to exclude the truck drivers. Normally there is no transferring of warehouse employees to other operations although now with a reduced force there is some.

All of the remaining employees should be in the production group which at present has about 260 people, 40 or 42 of them working in the machine shop of the Company which has its own foreman who reports to the superintendent. The machine shop is separated physically from the rest of the plant. While the people in the machine shop do not work on a bonus piece work system, the remaining production employees do. In all there are five foremen over the remaining production employees who report directly to the plant superintendent. Classifications such as general assemblers, fabricators and enamel workers are included in the production group.

The CIO wishes to include the foundry employees who are under the same roof as the other employees but their work place is physically separated by a partition. There are 54 or 56 employees in the foundry who receive their orders from one foreman who reports to the plant superintendent. Two of the foundry employees work nights. These are the only night employees at the present time. Blaney states that Lazarini of the Molders intends to intervene for these foundry workers.

All of the employees are hourly paid. The Company makes no claim as to the appropriateness of any unit and agrees that subforemen are not super-

visory and are eligible to vote, but that foremen should be excluded. All agree on these points.

Collins stated that the Company is in a reconversion period at present and intends to be in full production some time after the first of the year, and at that time they believe their personnel will be in the neighborhood of 600 employees, which is about a one-third increase over what they have at present. It was agreed that the service men (referring to those who give customer service and not those in military service) should be eligible to vote in the production unit, and that timekeepers, office clericals and guards would be excluded. Despol stated that he wished to represent the guards (of which there are but 7) but would file a separate petition for them.

Collins does not wish to consent to a globe-type election where it might turn out that he had some AFL groups and some CIO groups in his plant. Despol suggested that it could be worked out where just the AFL and the CIO would appear on the ballot by having the Metal Trades represent the crafts. Cordil and Roberts thought this could be done. Collins stated that he would not consent to an election otherwise, and didn't know if he would even then. He is to call me up Wednesday to inform me what the Company's decision is. Cordil, Roberts and Despol stated that they would consent to an election and set the date for November 20, and this was agreeable to Collins if he consents.

BERNICE T. PHOENIX,

Field Examiner.

[Endorsed]: Filed March 19, 1946.

Mr. Nicoson: If your Honor please, I think the parties and I have agreed to stipulate that memo prepared by Mrs. Phoenix about a conference which occurred in the Board's office on the 13th of November, 1945, in re: O'Keefe and Merritt, Case No. 21-R-3103, may be read into the record as substantially what occurred at this conference.

I understand there is some objection by Mr. Schullman. However, he is not bound by it, but he has indicated he is willing to stipulate that this is what occurred. Since it is very short I will ask permission to read it into the record, rather than having it copied, as it is not quite half a page. [848]

Mr. Schullman: No objection to having it read into the record.

Mr. Garrett: I am sorry if I misled counsel. I am not going to be able to stipulate that memorandum in. I guess I did mislead you.

Mr. Nicoson: You sure did. [849]

Mr. Garrett: Upon thinking it over, I feel it contains various conclusions, and I rather think that it is not sought by that memorandum to bind any of the parties except to the contract here I represent. It is a memorandum of a conference that took place in the place in the absence of both representatives of the company and of the C.I.O.

Mr. Schullman: When I said I had no objection to reading the record in, I have no objection to the form. Of course, I will object——

Mr. Garrett: I will stipulate that Mrs. Phoenix, while I do not object to the form, I mean I don't

object to it on the ground it is not the best evidence, but if it were offered for the record I would want to object on the ground of foundation and upon the ground that it contains various conclusions and that I would want those conclusions out.

Mr. Schullman: Of course I object to the substance thereof insofar as it may attempt to bind my clients. I object, without repeating the reasons, for all the reasons constantly interjected by us during the course of these proceedings.

Mr. Nicoson: Well, of course yesterday I tried to inquire from Mr. Despol what went on in that conference and Mr. Garrett objected and suggested that the memorandum prepared by the field examiner would be the best evidence, so I agreed to put in the memorandum at that time. Now I have a further memorandum of a further conference, and I was just trying to [850] do what they asked me to do yesterday. Now apparently today it is not as good as it was yesterday.

Mr. Garrett: I do not object to this on the ground it is not the best evidence.

Mr. Reed: I will stipulate to the memorandum being the best evidence, and will object to its being binding upon the I. A. of M. Inasmuch as I believe this is a little ambiguous in referring to A. F. of L. craft unions, it might be interpreted to include the I. A. of M., and for that reason I object to it being binding upon the International Association of Machinists.

Mr. Garrett: You see, this is a matter apparently upon which Mr. Nicoson could not introduce

any evidence from the witnesses he has here. We stipulated yesterday because we were in a position where we had a member of the C.I.O. who had been present at the meeting, but this memorandum does not purport to be a memorandum of anything except a discussion between Mrs. Phoenix of the Board and Mr. Sokol, an attorney, and a Mr. Laster, who is described as being identified with the Metal Trades Council. I think that points to the difference between the situation we are in on this memorandum and the one that we had on the other.

Mr. Nicoson: I can still call Mr. Conway to testify as to what happened and I will.

Mr. Garrett: Was he there? [851]

Mr. Nicoson: Yes, he was there.

Mr. Garrett: Let's look at that again.

Mr. Nicoson: Well, your Honor, in the same manner that the previous memorandum was entered by the stipulation of the parties, I at this time offer for the same purpose the second memorandum prepared by the field examiner, Mrs. Bernice Phoenix, dated November 13, 1945. I understand that counsel has some objection they would like to state at this particular time to the offer of this document.

Mr. Garrett: I do not object to the offer on the ground it is not the best evidence. I will stipulate that Mrs. Phoenix would so testify if she were called to the stand. But various of the statements made in that memorandum would, I believe, be subject to objection on the ground of lack of foundation, that they are not binding on various of the A. F. of L. unions involved, and as being conclusions.

Mr. Schullman: We merely renew our objections, not as to the form but as to the substance, as not binding on 792, and being insofar as they are concerned pure hearsay, incompetent, irrelevant and immaterial.

Trial Examiner Kent: Who was present at this conference?

Mr. Nicoson: Mr. A. E. Laster, Metal Trades Council, Mr. Sokol, Mr. Rotter appeared for the company, Mr. Conway and Anaya for the Steelworkers. The memorandum contains this statement, and I suppose this is the part that Mr. Garrett objects to: All of the A. F. of L. craft unions were represented by Mr. A. E. Laster. If that is the particular one, maybe we can work out something on that. Is that what you objected to, Mr. Garrett?

Mr. Garrett: Well, yes. I don't know what the circumstances are in that regard. I can't stipulate to that.

Mr. Nicoson: What about the rest of it?

Mr. Garrett: There are other conclusions also and I think she might not be permitted to testify over objection, statements with respect to the unit and the payroll to be used. I don't know anything about those agreements. If the Board can show that the agreements were made and that the persons purporting to bind these parties to the contract were authorized to do so, that is one thing, but in the absence of knowledge of my own on those points, I don't know whether—I was not representing any of those unions in the Metal Trades Council at the time of the meeting, and I can't.

Trial Examiner Kent: Well, if there is any ambiguity, any objection, it might be better to take some testimony by some party who was present.

Mr. Nicoson: Very well. Now, because of the hour, and I doubt very much that it will be possible to get Mr. Collins here, and we also discussed just prior to the luncheon recess, either on or off the record, the possibility of obtaining some stipulations, I would like to go off the record at [853] this time in order to discuss with counsel present the possibilities of arriving at such stipulations.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Schullman: I think I have indicated to the Trial Examiner that I won't be here tomorrow or any of my associates. However, since we won't be here, on the stipulation entered into between counsel for the Board and Mr. Collins, we have no objection thereto and we are not a party thereto. We are not bound. Similarly, may we have the same type of a motion to strike that part of the testimony concerning which Mr. Conway will testify tomorrow, for the same reasons we have heretofore urged?

Trial Examiner Kent: So far as it might be binding upon your client, yes, that may be a continuing objection. I will reserve ruling on the motion to strike. Well, in view of the fact that Mr. Collins stated that he was ill just prior to the noon recess, it would not be advisable, I don't believe to put on another witness at this time. I will say it is practically 4:30.

Mr. Nicoson: I think I have indicated on the record that I would not do so.

Trial Examiner Kent: I think that was true, at the time you entered into the other stipulation. It was apparent at [854] that time that we would consume substantially all the afternoon with the balance of Mr. Despol's testimony. We will adjourn then at this time until 9:30 in the morning.

(Whereupon, at 4:30 o'clock a.m., Tuesday, March 19, 1946, an adjournment was taken until Wednesday, March 20, 1946, at 9:30 o'clock a.m.) [855]

Wednesday, March 20, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: We might proceed at this time. All counsel are apparently present, excepting Mr. Schullman. Mr. Schullman stated to me just prior to the adjournment last night he probably would be unable to be here this morning.

My statement may have been a little incomplete. Mr. Stevenson is not here, also. Mr. Stevenson indicated on the record several days ago that he, in all probability, would not be present for most of the balance of the hearing. And at the time stated his position in reference to the case on the record.

Mr. Nicoson: I think, if your Honor please, Mr. Collins and I have arrived at a stipulation with respect to Board's proposed witness G. J. Conway.

It is stipulated between us that at the meetings that Mr. Conway attended in Mr. Collins' office and

at the two meetings or gatherings at the bar in Carl's Restaurant——

Mr. Collins: He was only at one of them.

Mr. Nicoson: That is right. That second meeting at Carl's.

Mr. Collins: Yes.

Mr. Nicoson: That is correct. That if Mr. Conway was called as a witness, he would, on direct examination, be asked substantially the same questions as those put to Mr. [860] Despol with respect to those meetings which he attended; and that he would give substantially the same answers; and that upon cross-examination he would be asked substantially the same questions as put to Mr. Despol with respect to those same meetings; and he would give substantially the same answers.

Mr. Collins: I will accept that stipulation.

Mr. Nicoson: It is further stipulated that if Leslie LaFrankie, Perry William Nethington, William Frank McCaskell and Robert N. Sutherland were called, with respect to the last meeting in Carl's Restaurant Cocktail Lounge, which has been fixed as February 1st, that if those four witnesses were called, with respect to that meeting, they would be, on direct examination, asked substantially the same questions as Mr. Despol was with respect to that meeting; and that they would give substantially the same answers thereto; that upon cross-examination they would be asked substantially the same questions with respect to that meeting as Mr. Despol was; and that they would give substantially

the same answers that he did with respect to that last meeting at Carl's.

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record?

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I will accept that stipulation. By my [861] acceptance of both of those stipulations, I do not mean that those people are necessarily telling the truth. I mean by that that they would so testify.

Trial Examiner Kent: The record may so show.

Mr Nicoson: Mr. Conway.

G. J. CONWAY,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. State your name for the reporter.

A. G. J. Conway.

Q. What is your business or occupation?

A. Representative, United Steelworkers of America, District 38.

Q. And your address?

A. 4110 East Slauson Avenue, Maywood, California.

Q. Mr. Conway, there is in this record some testimony with respect to conferences held in the Board's office leading up to a certain document which has been identified as Board's Exhibit 4.

(Testimony of G. J. Conway.)

Trial Examiner Kent: For identification.

Q. (By Mr. Nicoson): For identification. Did you attend any of those conferences in the Board's office?

A. Yes, I did. [862]

Q. How many conferences were there, as you recall?

A. Three.

Q. Did you attend all three?

A. I did.

Q. It has been stipulated into the record and a memorandum has been put in with respect to the occurrences at the first of those conferences, and the date was fixed as November 5th. Now, as to the second conference you attended, about how long after the November 5th conference did that occur?

A. It was November 13th.

Q. And who was present at that conference? First, where did it occur?

A. It occurred in this room here.

Q. Who was present?

A. For the Board was Mrs. Phoenix. For the company was Mr. Fred Rotter, personnel man of O'Keefe and Merritt. For the United Steelworkers of America Mr. Gilbert Anaya, a representative, and myself. For the A. F. of L. was Mr. Sokol.

Q. Who is Mr. Sokol?

A. I believe he is an attorney for the A. F. of L. I am not sure, but I believe he is.

Q. Is that David Sokol?

A. Yes.

Trial Examiner Kent: The A. F. of L. is rather a broad term.

Mr. Nicoson: Yes.

(Testimony of G. J. Conway.)

Q. (By Mr. Nicoson): Can you be more confining than that?

A. I do not know which of the A. F. of L. groups he represents.

Mr. Nicoson: Will you stipulate that he appeared before the Metal Trades Council on that occasion, Mr. Garrett?

Mr. Garrett: I will stipulate that.

Q. (By Mr. Nicoson): Who else was present?

A. Mr. Laster of the Metal Trades Council, Mr. Roberts of the Stove Mounters Union, Mr. Cordell, Cordell, I believe, is his name, of the Carpenters Union, Mr. McMurray of the Machinists Union, Mr. Blaney of the Teamsters Union, and to the best of my recollection Mr. Lazzerini of the Moulders Union.

Q. What was said at that time and place and who said it?

A. Do you want the whole conversation, sir?

Q. Yes.

A. Well, the meeting at that time, we were discussing the appropriate people that were eligible to vote. We had some discussion in regards to expeditors, timekeepers, production control, and other classifications. The argument at that time was between the A. F. of L. and the Steelworkers Union. We ironed out all those differences and everything was settled with the exception—— [864]

Mr. Garrett: I object to that as being a conclusion.

(Testimony of G. J. Conway.)

The Witness: Everything was settled but——

Mr. Garrett: Just a moment. I object to the statement “everything was settled” and ask the witness be confined to relating the conversation.

Trial Examiner Kent: Yes, you may say just what the items were that were settled.

Mr. Garrett: If your Honor please—— [865]

Trial Examiner Kent: Better break it down into the conversation, what statements various people made.

Q. (By Mr. Nicoson): Will you please do that? A. I cannot remember.

Trial Examiner Kent: Well, naturally, but the substance, to the best of your recollection; you may not be able to give it verbatim. We hardly could expect that unless you made notes at the time.

Mr. Garrett: I ask the witness be directed to relate to the best of his recollection what was said and who said it.

Trial Examiner Kent: Yes, I think that is a proper request.

The Witness: As I remember one part of the conversation in regards to expeditors, and production control, Mr. Sokol was insisting that they be included to vote. I took the position for the Steelworkers Union that they came under clerical or office help and was asking that they be excluded. To the best of my recollection it was finally agreed that they would not be able to vote. We then had discussion on the time that the election was to be held.

I took the position for the Steelworkers' Union

(Testimony of G. J. Conway.)

that the election should be held at 4:30, right after work. The A.F.L.—I do not know who at that time was speaking for them—I do not remember—took the position that they wanted it held on working hours. [866]

Mr. Rotter for the company stated that he would get in touch with Mr. Collins and see which would be agreeable for the company. He then called—left the hearing room and called the company, and came back in and said he had been unable to reach Mr. Collins, and he would have to let us know the next day. A meeting then was arranged for the next day, to sign the consent papers of the election.

Q. What was said about that, if anything?

A. Mr. Lassiter of the Metal Trades Council stated, "I cannot be here tomorrow to sign the consent papers."

After some discussion among the A.F.L. group Mr. Lassiter stated that Mr. McMurray of the Machinists would be at the meeting the next day to sign the consent papers for the Metal Trades Council.

Q. Did anything further transpire at that time, that you now recall?

A. There was general discussion about the election, but I don't think it has any bearing.

Q. Did you in this connection again return to the Board's office? A. I did, the next day.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit

(Testimony of G. J. Conway.)

4, and ask you to examine it and state, if you know, what it is.

A. Yes, it is the agreement for a consent election. [867]

Q. Directing your attention to the signature on that document, is that your signature which says, "G. J. Conway"? A. That is.

Q. Do you recall when you signed that document? A. I do.

Q. When was it signed?

A. 1:30 on November 14th—between 1:30 and 2:00 o'clock in the afternoon.

Q. Who else was present at that time?

A. Mr. Rotter for the company, Mr. McMurray of the Machinists' Union, some other gentleman that was with Mr. McMurray, I do not know his name. I was introduced to him, I have forgot his name. And Mrs. Phoenix for the Board.

Q. Now, the document also indicates that there are other signatures there. Were those signatures attached in your presence? A. They were.

Q. Mr. Rotter, is that Mr. Rotter's signature (indicating)?

A. That is the man that signed it, yes, sir.

Q. Likewise for the Metal Trades?

A. That is right.

Q. And Mrs. Phoenix? A. That is right.

Mr. Nicoson: I now offer in evidence Board's Exhibit 4.

Mr. Garrett: One moment. Ruling was reserved on that. [868]

(Testimony of G. J. Conway.)

I had objected on behalf of the unions, parties to the contract, whom I represent, to the reception of that exhibit on the ground that it is incompetent, irrelevant and immaterial; not tending to prove or disprove any of the issues on this case; not tending to prove or disprove any of the issues in this case; not binding on these unions and not relating to any employer with whom these unions, parties to the contract, have or ever have had contractual relations.

I think there were reserved objections to approximately the same effect entered also by the Machinists and by the Painters.

Trial Examiner Kent: The exhibit will be received.

(Thereupon, the document heretofore marked as Board's Exhibit 4, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 4

United States of America
National Labor Relations Board

Case No. 21-R-3101

In the Matter of
O'KEEFE & MERRITT COMPANY

AGREEMENT FOR CONSENT ELECTION

The undersigned Employer (herein called Employer) and the undersigned labor organization(s), subject to the approval of the Regional Director for the National Labor Relations Board (herein called

(Testimony of G. J. Conway.)

the Regional Director and the Board respectively),
Hereby Agree as Follows:

1. Secret Ballot—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

Time and place of election—November 20, 1945-4:30 p.m. to 5:30 p.m. Employee entrance by time clocks

2. The Unit—

All production and maintenance employees excluding office clerical employees; guards; parcel post clerks; draftsmen; timekeepers; material expeditors; pattern makers and patternmaker helpers other than those working in sheet metal; experimental laboratory workers; and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

(Testimony of G. J. Conway.)

(herein called the Unit) constitute a unit appropriate for the purposes of collective bargaining.

3. Eligible Voters—The eligible voters shall be those employees included within the Unit, who appear on the Employer's pay roll for the period indicated below, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

Pay-roll period for eligibility—November 4, 1945

4. Names on Ballot—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First United Steelworkers of America, Stove Division Local 1981, C.I.O.

Second Neither

Third Los Angeles Metal Trades Council,
A. F. of L.

Fourth

(Testimony of G. J. Conway.)

5. Notices of Election—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

6. Observers—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

7. Objections, Challenges, Reports Thereon—Objections to the conduct of the ballot, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report in-

(Testimony of G. J. Conway.)

clude an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon.

8. Consent Determination of Representatives—The Regional Director shall, if and when appropriate, issue a Consent Determination of Representatives to the parties, setting forth the name of the labor organization which has been designated and selected as the exclusive representative of all the employees in the Unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

9. Run-off Procedure—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall conduct a run-off election at a time and place to be determined by him. Said run-off election shall be in accordance with Article III, Section 11 (b) and (c) of the Board's Rules and Regulations.

O'KEEFE & MERRITT COMPANY,

(Employer).

By /s/ F. F. ROTTER.

(Testimony of G. J. Conway.)

Recommended:

/s/ BERNICE PHOENIX,
BERNICE T. PHOENIX,
Field Examiner National
Labor Relations Board.

Date executed 11-14-45.

Date approved 11-14-45.

/s/ STEWART MEACHAM,
Regional Director National
Labor Relations Board.

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

(Petitioner)

By /s/ G. J. CONWAY
LOS ANGELES METAL TRADES COUNCIL,
A. F. of L.

By /s/ H. B. McMurry

[Endorsed]: Filed March 13, 1946.

Mr. Garrett: That is in evidence now.

Q. (By Mr. Nicoson): The record in this proceeding indicates that the first session of this hearing was held on March 6, 1946. After that session was concluded did you have a telephone conversation with Mr. Collins? A. I did.

Mr. Garrett: Just a second. Now, on this first meeting at the Board that this witness testified to first, Mr. Nicoson, you have Mrs. Phoenix's memo on that that gives the date. Can you give me that date? [869]

(Testimony of G. J. Conway.)

Mr. Nicoson: November 13th; we established that.

Mr. Garrett: November 13th?

Mr. Nicoson: That is correct.

Mr. Garrett: That is right. November 13th.

Mr. Nicoson: The first one he testified to. Not the one we put the memo in about.

Mr. Garrett: Yes. The date of signature was November 14th?

Mr. Nicoson: That is right.

Mr. Garrett: Now, this conversation you are going to go into now is March 6th; is that correct?

Mr. Nicoson: That is correct.

Mr. Garrett: March 6th?

Mr. Nicoson: March 6th of this year.

Mr. Garrett: 1946.

Mr. Nicoson: The first day of the hearing, after it.

Mr. Garrett: I presume the complaint in this case speaks of its date. I wonder, what was the date of the complaint? Do you have it? The second amended complaint.

Mr. Nicoson: That date of it?

Mr. Garrett: Yes. Do you have a filing date on such things, Mr. Nicoson?

Mr. Nicoson: Well, I can tell you. It was signed on the 20th day of February, 1946. That is shown on the face of the second amended complaint. [870]

Mr. Garrett: Well, I am a little bit at a loss with respect to testimony regarding March 6th, the date after this hearing occurred, the day this hear-

(Testimony of G. J. Conway.)

ing started, and subsequent to the date the complaint was filed.

I don't know whether there will be anything adduced in that conversation that seeks to be binding on my clients, parties to the contract, or not.

Mr. Nicoson: Well, I don't know——

Mr. Garrett: Insofar as it relates to the company, of course, I have no objection. But I will object to anything in a conversation of March 6th, 1946, insofar as it may relate to my clients, as not tending to prove or disprove any of the issues in the complaint. Of course, it couldn't, it is obvious, on account of the date of the complaint. The date of the complaint speaks of events occurring up to the time of its issue. Without a supplemental complaint I don't believe anything testified about it by this witness could go to the issues of the complaint. But I want to make it clear. I make that objection only insofar as anything in this conversation may be sought to be adduced to be binding on my clients. So far as the company is concerned, I don't care what this witness testifies to.

Mr. Nicoson: Well, I don't mind telling you why I have asked this question. It came up between Mr. Collins and me when we were trying to reach a stipulation with respect to [871] generally Mr. Conway's testimony. On this particular phase we were unable to get together, so I told him that I was going to put him on for this purpose, of examining the second and third meetings in the Board's office, and I would ask this question to lay

(Testimony of G. J. Conway.)

the ground work so he could cross the witness on that particular telephone conversation.

Mr. Garrett: That is merely a matter between the C.I.O., the Board and the company, and I take it the parties to the contract——

Mr. Nicoson: I think perhaps it is between the Board and Mr. Collins—yes. I didn't even consult with the C.I.O. about asking these questions.

Mr. Garrett: Nobody was consulted about anything in this conversation that is now about to be related with anyone representing the A.F.L.?

Mr. Nicoson: So far as I know that is true.

Mr. Garrett: I have no objection.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Nicoson): Will you state what you said to Mr. Collins and what Mr. Collins said to you?

A. After I returned to my office I called Mr. Collins at the O'Keefe and Merritt Company, and the girl at the switchboard stated that he was out, but he would call in and she would have him call me.

Mr. Collins then called me that afternoon. I asked Mr. Collins [872] if he would negotiate with the Steelworkers Union the contract we had submitted to them for the employees at O'Keefe and Merritt.

He stated that for the O'Keefe and Merritt employees he was willing to negotiate, but now there was another company, the Pioneer Electric, and he could not negotiate for those employees. [873]

(Testimony of G. J. Conway.)

I said, "Well, if that is the case, then the position of this Union is that we are the certified bargaining agent and we wish to negotiate for all employees." That is all the conversation there was. Mr. Collins, I believe, says, "I will let you know," and I haven't heard from him since.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. We had substantially the same conversation some time prior to the 6th of March, when we talked on the telephone?

A. We had a lot of them, Mr. Collins. Which one?

Q. Well, sometime after this meeting that you had with me in this cocktail bar at Carl's Cafe, we talked on the telephone after that, too, did we not?

A. I believe once only. I left for Phoenix and when I got back there was a call for me, and I then called you, yes, sir.

Q. And the conversation was substantially the same, was it not?

A. No, it was not.

Q. Well, did you ask me to continue to bargain for the employees at the O'Keefe and Merritt Company?

A. No, you did not—or I did not.

Q. And did I at that time tell you that there was a contract between the Pioneer Electric and the A. F. of L., and I could [874] not bargain for Pioneer's employees, but I could for the O'Keefe and Merritt employees?

A. You did not.

(Testimony of G. J. Conway.)

Q. This conversation you related on the telephone wherein I called you back pursuant to your request, didn't I tell you—didn't you ask me in the conversation would I give the C.I.O. the same contract for the O'Keefe and Merritt employees that the Pioneer Electric had with the A.F.of L.?

A. I did not.

Q. And didn't I tell you that I would have to think that one over, as to whether we would give you the exact same contract or not?

A. You did not.

Q. Didn't I tell you I was not in my office, that I was calling from a public booth?

A. That is right.

Q. And didn't have my contracts with me and the matter was not fresh in my mind?

A. You did not.

Q. I did tell you that I was calling from a public booth?

A. You did.

Mr. Collins: That is all.

Q. (By Mr. Garrett): Mr. Conway, with respect to the first conference you have related occurring November 13, 1945, in this room, when Mrs. Phoenix of the National Labor Relations Board was [875] present, have you now told us all you recollect concerning that conversation?

A. To the best of my ability, yes, sir, but that was not the first meeting. That was the second meeting.

Q. No, that is right. But the first one you have testified about here today.

A. Yes, sir.

(Testimony of G. J. Conway.)

Q. You know the one I mean? A. Yes, sir.

Q. It is the first one you testified to today.

A. Yes, sir.

Q. Which occurred on November 13, 1945, in this room, various other people were present, and Mrs. Phoenix of the Board was here.

A. Yes, sir.

Q. Your testimony is that you now have told us all that you can recollect of that conversation.

A. To the best of my ability, yes, sir.

Mr. Garrett, I am sure that this other gentleman, I can't think of his name, he was with Mr. McMurray of the Machinists Union. He works for the Machinists Union, but I don't recollect his name, and I am sure that he also was at that meeting. I don't know whether I put that into the record or not.

Q. Well, I think you did. [876]

A. I know he was at the second meeting the next day. I don't know whether I stated he was at the first meeting or not.

Q. Well, he was at the first meeting but you don't remember his name?

A. No, I met him the next day, but I don't know his name.

Q. Anything else that you remember about the November 13, 1945, meeting that you have not already told us?

A. No, not that I recollect, sir.

Q. All right. Now, coming to the November

(Testimony of G. J. Conway.)

14th date, when you met here at 1:30 and Mr. Roter, Mr. McMurray and this unidentified gentleman and Mrs. Phoenix were here, have you already told us everything you can recollect about that meeting?

A. To the best of my ability, yes, sir.

Q. You have nothing further to add?

A. No, sir.

Q. Nothing further you can recollect?

A. No, sir.

Mr. Garrett: No further questions.

Mr. Nicoson: Nothing further.

Mr. Tyre: I have one question.

Q. (By Mr. Tyre): Would you state this, Mr. Collins, what was the conversation you had with Mr. Collins when he was calling you from the telephone booth, state what he said [877] and what you said. A. You directed that to Mr. Collins.

Q. I am directing the question to you.

A. You said Mr. Collins. I believe I have already put that in the testimony.

Q. No, you didn't. That is the conversation upon which Mr. Collins was cross-examining you and he asked you certain questions, but I think——

A. Oh, you mean the meeting when I returned from Phoenix, or the time I returned from Phoenix.

Q. That is right.

Mr. Collins: Just a minute. I object to this as not proper redirect. The proceeding will continue interminably if we are going to permit counsel at any time they think of something new just to re-open it.

(Testimony of G. J. Conway.)

Mr. Tyre: This is a matter raised by Mr. Collins on cross-examination.

Mr. Collins: If this is continued cross-examination, I will object to it as not being proper cross-examination of a matter brought out on direct. He never asked about the conversation.

Trial Examiner Kent: You may inquire.

The Witness: Shall I answer that question?

Trial Examiner Kent: Yes.

The Witness: When I returned to the city from Phoenix, [878] there was a call for me from Mr. Collins. I called Mr. Collins and spoke to him in the evening, to the best of my recollection, it was between 5:00 and 6:00 in the evening. I called his office and he was not in, then he called me back, and Mr. Collins stated that he had been trying to get hold of me, and he says, "Jerry," he says, "I wish I had got hold of you first." He says, "I want to deal with you anyway." And he says, "The offer is still open that I made you the other night." He says, "You better think it over." I stated that I could not accept his offer, and that was all the conversation there was. He says, "O.K." and I says "O.K."

Mr. Nicoson: Can we have the time fixed on that, counsel?

Q. (By Mr. Tyre): Can you recall the date, approximately, of that?

A. No, not without contacting my office and checking my calendar.

(Testimony of G. J. Conway.)

Q. Well, was it before or after the election, this Labor Board election?

A. Oh, it was way after that. It was after February 1st, after we had had the meeting in Carl's Restaurant.

Mr. Tyre: That is all.

Mr. Nicoson: No further questions.

Mr. Garrett: No questions. [879]

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Nicoson: Is Mr. O'Keefe here?

Mr. Collins: Not right now. He will come. When do you want him?

Mr. Nicoson: I don't know. Mr. Reed has not examined Mr. Spallino.

Mr. Garrett: There was further cross of Spallino. I have had him.

Mr. Nicoson: Do you have any, Mr. Reed?

Mr. Reed: No, I have no cross-examination of Mr. Spallino.

Mr. Nicoson: Then, I guess we are about back to redirect, then.

Mr. Garrett: That is right. You recall Mr. Schullman was offered cross-examination yesterday and made a motion instead.

Mr. Nicoson: Mr. Spallino, will you please take the stand.

CHARLES SPALLINO,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination

By Mr. Nicoson:

Q. You are the same Charles Spallino who [880] previously testified in this hearing, are you not?

A. Yes, I am.

Q. I believe you said during the course of your examination, either on cross or direct, you served as an observer at the election which it has been stipulated was held on November 20, 1945, at O'Keefe and Merritt, is that correct?

A. I did.

Mr. Garrett: Lest it be said my interposition is not timely, may I inquire the purpose of recalling Mr. Spallino at this time?

Mr. Nicoson: Mr. Spallino is now recalled on redirect.

Mr. Garrett: Redirect. Thank you.

Mr. Nicoson: Mark this the next in order.

(The document referred to was marked as Board's Exhibit No. 11 for identification.)

Q. (By Mr. Nicoson): I hand you a document which, for the purpose of identification has been marked Board's Exhibit 11, and ask you to examine and state if you know what it is.

Mr. Garrett: Objected to as not proper direct.

Mr. Nicoson: Well, I laid the foundation for it, I think.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Objection overruled. The answer may be taken.

The Witness: What is the question, please?

Q. (By Mr. Nicoson): Do you know what that document is? [881] A. Yes.

Q. What is it?

A. This is a certificate that I signed when we got through with the election at O'Keefe and Merritt.

Q. Was that signed in your capacity as an observer of the election? A. Yes, it was.

Q. Is that your signature on there?

A. This is my signature right here.

Q. These other signatures were attached in your presence?

A. I don't recall. I am sure that these people here may have signed——

Q. You are pointing to these people, but the record won't show to whom you are pointing. Will you read them?

A. I am not so sure that Louie Ortega was ahead of me. I think these signatures were on there.

Mr. Nicoson: What did he say?

(The answer was read.)

The Witness: I don't remember now whether the C.I.O. or the A.F.of L. signed first.

Q. (By Mr. Nicoson): Well, were they signed at or about the same time? A. Yes.

Q. At the conclusion of the election?

A. At the conclusion. [882]

(Testimony of Charles Spallino.)

Mr. Garrett: I wonder, will you take a look at the proffered exhibit, your Honor. The direction of this examination is now apparent, your Honor, and I have not had a ruling yet on my objection that it is not proper redirect. I will make the further objection——

Trial Examiner Kent: I thought I ruled on that.

Mr. Garrett: Of course, you didn't know what the examination was going to be. I stated I merely interposed it at that time so that Mr. Nicoson would not claim again that my objection was not timely. I didn't know what he was going to call this man about and put him on for. The man, however, has been called and has been cross-examined.

This certification doesn't go to any matter that was raised either on direct or cross. This man can't be used to prove the result of an election. That is not the best evidence.

No offer is made showing the purpose of this testimony or the relevancy of this document. Is it intended to prove, by the fact this man put his signature on the document, the election is fair? If so, that is not the way to prove it. Is the fact the election was fair a proper or essential or material thing for the Board to prove? I don't think so.

Trial Examiner Kent: Of course, there is prior testimony in the record that he was present and served as an observer. [883]

Mr. Garrett: That is correct.

Trial Examiner Kent: At the election?

(Testimony of Charles Spallino.)

Mr. Garrett: That is correct. But what of it? What possible argument is there for the materiality of this document? I would like to hear what reason the Board has for trying to put it in, except possibly that they intend to prejudice somebody by reason of the fact that this man has signed his name in two places, one as an observer for the company and one as an observer for the Los Angeles Metal Trades Council.

Trial Examiner Kent: Another purpose might be the proceedings in connection with the election were regular, I suppose, in accordance with Board's general rules. That would be one purpose. There also might be others.

Mr. Garrett: Is it material for the Board to prove that? What bearing has the election in the O'Keefe and Merritt case, anyhow, upon the issues here? The Board has made a certification. It made a certification——

Trial Examiner Kent: Yes, I think it is material. I think it is clearly material to the issues.

Mr. Garrett: On what theory? I will bet the Board can't state any theory on which it is material. I assign this as misconduct, an attempt to prejudice these unions, parties to the contract, by placing before the Board in evidence a document which is obviously ambiguous on its face, and which is offered for no other reason than to prejudice these parties to the contract.

There is only one reason why this document should ever have been offered, and there is only one

(Testimony of Charles Spallino.)

reason why it is offered, and that is because it bears Mr. Spallino's name twice, once as observer for the company and once as observer for the Los Angeles Metal Trades Council.

Mr. Nicoson: Of course, I will call counsel's attention to the fact he is interposing these objections before I have had an opportunity to complete the foundation questions with respect to this document. Also, I haven't offered it yet. I don't mind telling him that as the complaint, I think, clearly shows—as we intend to prove—that Board certification was made down there over a group of employees who it is alleged have now become Pioneer Electric employees.

I don't think it is any secret in this hearing that, as counsel himself has phrased it, the Pioneer Electric is the alter ego of O'Keefe and Merritt. There are also decisions of the Board which show, even in the absence of such a showing as the alter ego, if the board has made a certification over a group of employees, that certification thereafter can't be evaded by a change in ownership.

That is not only sustained by decisions of the Board, but also sustained by one decision that comes to my mind by the Sixth Circuit in the Kitty Kover case, or Colton case. [885]

I submit it is entirely relevant and entirely material to this issue to show the entire line of the events leading up to the election, who was involved, who participated, and what capacity they participated in, leading up to, as I will prove, the certification

(Testimony of Charles Spallino.)

covering those employees down there on a unit which these people here, among whom are some represented by Mr. Garrett, that came in and signed a consent election and asked us to come down and hold an election; and we did. I propose to show exactly what went on down there at the election.

Mr. Garrett: I want to first say I don't agree with any of the conclusions Mr. Nicoson has expressed as to what he proved or what the Board did. The Board will decide that.

Mr. Nicoson: I suppose that is obvious or else he wouldn't be here.

Mr. Garrett: It is now obvious, also that Mr. Nicoson is trying to prove, by recalling this witness, an essential portion of his case, to wit, who was covered by a determination of representatives by this Regional Board.

All of the best evidence as to that, as to who is represented to be the employer, what payrolls were called for, what payrolls were used, what determination as to eligibility there was, all of that information reposes in the files of the Twenty First Regional Board. It is held by them as private and not public records. It is inaccessible [886] to me, but not to Mr. Nicoson.

Mr. Nicoson: I don't think that is a true statement, that he has ever been denied a right to look at the poll list at that election down there. The only thing I have told him that I would not permit him to see, and I couldn't under any circumstances show

(Testimony of Charles Spallino.)

him, were the cards submitted to us by the labor organization.

I further state I wouldn't even show him the cards submitted to us by the A. F. of L., if they still happen to be in our hands; of which there were many.

I do have the payroll list here. I have no objection to his looking at it. As a matter of fact, I propose to enter it as an exhibit in this hearing.

Trial Examiner Kent: Yes, I assumed that was coming in in due time, either by being presented by the Board or the company as part of the case. I don't think you are prejudiced. You might proceed.

Mr. Garrett: Can your Honor see any theory upon which this evidence can be material, when the Board sets up a man, obviously a man whose credibility is open to the most serious question on all sides, to set up and testify as second-hand—I should say not only the best evidence, but as the worst conceivable evidence, to testify as to matters which are implicit in the records of the Board itself. It seems to me the Board may be trying to conceal something.

Mr. Nicoson: Your Honor, that is what I am trying to do, is put in here the records of the Board, the official records of the Board.

Ordinarily, in case after case in which I have participated, we didn't even bother with these objections, because the official records, of which the Board will take judicial knowledge, whether Mr. Garrett objects or Mr. Collins objects or I object, or anybody objects. These are official public records

(Testimony of Charles Spallino.)

of the National Labor Relations Board. It can take judicial knowledge if they weren't even in this record. I think we are wasting a whole lot of time about these official records as part of the public file. All of these parties have had copies of these documents. There isn't anything secret about it. They were served on the company. They were served on the Los Angeles Metal Trades Council, they were served on the C.I.O.

Mr. Garrett: I don't represent the Los Angeles Metal Trades Council.

Mr. Nicoson: They were the party to this election down there. I don't care who you represent. I am just telling you what the official records show, and I propose to put the official records in here.

Trial Examiner Kent: You might proceed.

Mr. Tyre: Mr. Examiner, I would like to make one other statement as to a possible purpose of this examination. Mr. Garrett, on the fifth day of this hearing, just prior to the noon recess, in cross-examination of Mr. Spallino, asked him whether or not he was an observer for the Stove Mounters' Union at the election.

Mr. Nicoson: Exactly correct.

Mr. Tyre: And I think this witness now has the right on redirect examination to clarify any ambiguities that are left by that line of examination by Mr. Garrett.

Mr. Garrett: What date was that?

Mr. Tyre: That was the fifth actual day of hear-

(Testimony of Charles Spallino.)

ing, including the first day we asked for a continuance.

Trial Examiner Kent: That would have been yesterday.

Mr. Tyre: No, it wouldn't have been yesterday.

Trial Examiner Kent: No.

Mr. Tyre: It would have been on Friday.

Mr. Collins: Has there been a ruling?

Mr. Nicoson: There have been two or three rulings to go ahead.

Trial Examiner Kent: Yes. I will overrule the objections and let counsel proceed.

Mr. Garrett: Since the statement has been made I asked a certain question of this witness, I ask the consent of the [889] Board to let me review my notes, so I may either concede or deny the statement made by Mr. Tyre.

Mr. Nicoson: On page 606, in the cross-examination by Mr. Garrett: Let the record show I am showing Mr. Garrett a copy.

Mr. Garrett: That is right. You read it.

Mr. Nicoson: I wish you would read it.

Mr. Garrett: Where do you want me to read?

Mr. Nicoson: Here (indicating).

Mr. Garrett: This is the evidence to which Mr. Nicoson refers on page 606. I asked the question:

“At the election you say you acted as an observer for the Stove Mounters?

“A. Yes; forcibly.

“Q. Well, now, just what do you mean?

“A. I had refused it. On the last minute

(Testimony of Charles Spallino.)

Roberts and one of the government agents there came and told me, said, 'You are going to be an observer'.

"I said, 'I told you I didn't want to be an observer'.

"They pinned a button me and gave me a list of names to check.

"Q. Were you the only observer for the A.F.L. at that election? A. No, sir.

"Q. Who else was observer for A.F.L.?

"A. I don't remember who they all were. One, that was alongside of me, McNitch or Mac something, a fellow in the machine shop. I don't remember his name.

"Mr. Nicoson: I think, if it is important, counsel, the official records of the Board will indicate who the other observer was.

"Q. (By Mr. Garrett): You were the one then who had to decide whether any votes would be challenged for——

"A. No, I didn't challenge any votes. All I did was keep the chart, the list of names, to check, they voted or not.

"Q. You didn't make any challenges; is that right? A. I did not."

Then recess.

Trial Examiner Kent: You may proceed.

Mr. Garrett: I take it you are overruling my objection?

Trial Examiner Kent: The objection is overruled, yes.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): You still have before you the document which has been marked for identification as Board's Exhibit 11. I will ask you to state, if you know, did any of the other persons whose names appear there act in the capacity of observer in the election at that time.

A. Yes; Levascos.

Q. Any of the others you know of?

A. And Louie Ortega and Leonard. He was for the C.I.O. [891] And so was Louie Ortega. And McNinch. I remember now he was for O'Keefe. He was at my table.

Q. Was he helping you with the checking, is that your story? A. Yes.

Q. And who helped you with the checking?

A. Louie Ortega sat on one side of me. He did the challenging for the C.I.O.

Mr. Garrett: May I have a continuing objection to this line of questioning? It is not binding on these unions, parties to the contract.

Trial Examiner Kent: The objection may go to the line, yes.

Mr. Collins: I should like to interpose a continuing objection on behalf of the Pioneer Electric Company.

Mr. Garrett: I take it, your Honor recognizes I have as grounds for my objection also that this is not proper redirect and that it is immaterial.

Trial Examiner Kent: I believe you so stated, yes.

Mr. Garrett: The first time.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Yes.

Q. (By Mr. Nicoson): Had you finished your last answer?

A. At my table there was Louie Ortega for the C.I.O. and McNinch for the company.

Q. What were you doing at your table? [892]

A. I was checking the name list.

Mr. Nicoson: I now offer in evidence Board's Exhibit 11.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; not binding on these unions; not having any bearing on any of the issues in this case; not the best evidence.

Trial Examiner Kent: That is your signature on the document?

The Witness: That is, yes.

Trial Examiner Kent: Did you see the other gentlemen sign?

The Witness: Well, it was passed among us.

Trial Examiner Kent: At the time?

The Witness: Every one signed, yes.

Trial Examiner Kent: You saw them sign?

A. I saw Johnnie Levascos sign and I saw Mr. Ortega sign. I saw all the others sign.

Mr. Garrett: May I have the witness on voir dire?

Mr. Nicoson: Wait a minute. I think it is a little late for that. I think we have wasted enough time on it.

Mr. Garrett: I would just as soon take it on cross.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I think you can take it on cross-examination. The exhibit may be permitted.

Mr. Garrett: Will the objection not be raised the questions I raise on cross are properly voir dire, before the admission of the document? [893]

Mr. Nicoson: I don't know what he means by that.

Mr. Garrett: My questioning to the execution of the document itself, Mr. Nicoson.

Mr. Nicoson: You mean as to the signing of that document?

Mr. Garrett: Yes. Those questions that ought to be raised on voir dire.

Mr. Nicoson: All right.

Trial Examiner Kent: I will reserve my ruling and let you examine at this time.

Voir Dire Examination

By Mr. Garrett:

Q. You have the original Board's Exhibit 10 before you; have you?

Mr. Nicoson: Board's Exhibit 11.

Q. (By Mr. Garrett): Board's Exhibit 11. Take a look at it, Mr. Spallino. A. Yes.

Q. You notice your name appears there twice.

A. It was a mistake by signing on the wrong side.

Q. Is that your handwriting in both places?

A. It is on both.

Q. The first place you signed, the place at the

(Testimony of Charles Spallino.)

top, you will notice a line through your signature there. A. That is right.

Q. Do you know who put that line through there? [894] A. No.

Q. Did you put it through there?

A. I am not sure. Mrs. Phoenix said, "That is the wrong place to sign." I am not sure.

Q. Just a minute. The last time you saw this document before you, Board's Exhibit 11, are you willing to state that at that time, on the day of the election, the last time you saw this document, which is Board's Exhibit 11, there was a line through your signature?

A. I don't remember seeing the line on the signature.

Q. As a matter of fact, you don't remember seeing any line through that signature until the document—— A. Until now.

Q. Until the document was presented here today? A. That is right.

Mr. Garrett: That is all.

Mr. Nicoson: Now it is offered again.

Trial Examiner Kent: It may be admitted.

(Thereupon, Board's Exhibit 11, heretofore marked for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 11
United States of America
National Labor Relations Board
CERTIFICATION ON CONDUCT OF
ELECTION

Name of employer, O'Keefe & Merritt Company.

Case No. 21-R-3101.

Date of election Nov. 20, 1945.

Place, Los Angeles, California.

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

We Hereby Certify that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For O'Keefe & Merritt Company,

/s/ ~~CHARLIE SPALLINO,~~

/s/ C. S. McNINCH,

/s/ CHARLES McARTHUR.

For the Regional Director, 21st Region,

/s/ BERNICE T. PHOENIX,

/s/ MARTIN ZINING.

For United Steelworkers of America, Stove Division Local 1981, C.I.O.,

/s/ LOUIS F. ORTEGA,

/s/ DEWARD LEONARD.

For Los Angeles Metal Trades Council, A.F.L.,

/s/ CHARLIE SPALLINO,

/s/ JOHN LEVASCO.

[Endorsed]: Filed March 20, 1946.

(Testimony of Charles Spallino.)

Mr. Nicoson: I ask permission at this time——

Mr. Garrett: On its face it contains an obvious alteration that isn't explained.

Mr. Nicoson: I ask permission at this time, if your Honor please, to substitute true copies of this document and [895] withdraw the original.

Mr. Garrett: That is one stipulation I can't make.

Mr. Nicoson: I didn't ask you to stipulate. I asked permission of the Trial Examiner.

Mr. Garrett: I insist that the original document be left in the record. The alteration on that document is an important element in our case.

Mr. Nicoson: The copy showed——

Trial Examiner Kent: Do you contend, Mr. Garrett, that the two signatures purporting to be on the document as signed by Spallino are not identical?

Mr. Garrett: I contend that they are identical and that the document shows on its face that the election is irregular, that this observer was acting for the company while purporting to act for the A. F. of L. unions. They were denied their proper protection in the election.

Mr. Nicoson: That is about the most frivolous objection I have ever heard.

Trial Examiner Kent: I can't see that then materiality of the actual signatures, if you do not dispute that the two signatures on that document which are purportedly signatures of Mr. Spallino are not the same, and you apparently admit that they are.

(Testimony of Charles Spallino.)

Mr. Garrett: You recall, if your Honor please, that the record shows that this man was asked, according to his [896] testimony, to act as an observer, not only by Mr. Roberts but by an official of the N.L.R.B. The official of the N.L.R.B. had an obligation to the A. F. of L. unions to see that they had an observer there, providing that official interposed, and the obligation was an observer who would represent them and not the company. This original document shows that this man was there and regarded himself there as the representative of the company and not of the A. F. of L. union. As far as I know, the election may have been rigged on that alone.

Trial Examiner Kent: I think the record is clear on that.

Mr. Garrett: I do not expect your Honor to agree with me in all cases, but I expect your Honor to give me a record that I can argue before the Board back in Washington, and I contend there should be inclusion of that original document rather than a copy in the record, that this particular sheet is essential to my case, and I am being denied my material rights if a copy rather than that original goes back there.

Mr. Collins: In that respect I join in Mr. Garrett's objection.

Mr. Nicoson: If that is what the situation demands, I haven't anything up my sleeve. I will let the original go in. [897]

(Testimony of Charles Spallino.)

Mr. Garrett: I don't object—I mean I am not screaming about the court's ruling on my objection, courts have been ruling against me for 25 years a whole lot oftener than with me, but I have a right to my record.

Mr. Nicoson: I am certainly not surprised, considering the frivolousness of your objections. Let the record show that the original document goes in.

Mr. Garrett: I thank you, Mr. Nicoson. I thank you for your fairness.

Mr. Tyre: I think the record should also show that the copies that have been served upon us have a typographical error. The copies show——

Mr. Nicoson: The original is in now, so I don't want——

Mr. Tyre: I don't want counsel to argue about the copies in their briefs.

Mr. Nicoson: The copies that have been furnished you are not in evidence. The original is there. As far as I know the copies never existed.

Mr. Tyre: All parties have seen the copies, and the typographical error is on the copy, Charlie instead of Charles.

Mr. Nicoson: Mark this next.

(Thereupon, the document referred to was marked as Board's Exhibit No. 12, for identification.)

Q. (By Mr. Nicoson): I now hand you a document, Mr. Spallino, consisting of 9 sheets of paper, and ask you to [898] look at it, examine it, and state if you know what it is.

(Testimony of Charles Spallino.)

Mr. Garrett: May I have an understanding with counsel that if I object on the ground that it is not proper redirect after I myself have been shown the paper, the objection will not be made that my objection is not timely?

Trial Examiner Kent: I won't rule until the exhibit—the exhibit has not been offered yet, anyway. You will have an opportunity to make your objection.

Mr. Garrett: I don't want to interfere with the foundation, but I want to preserve my right to object.

Trial Examiner Kent: Oh, yes, you will have an opportunity to examine the document before it is received.

The Witness: What I have here is the list of names and this is with the blue chalk here, pretty sure is the one that I had, the list to check on my line. There were two lines formed there for election, and I am pretty sure that this is the copy that I went through.

Q. (By Mr. Nicoson): What do you mean you went through?

A. Well, to check off the names as they came by.

Q. Where?

A. The voting booth. There was a table there and they all had to pass, they had an alphabetic there, a certain number, I don't recall the numbers on one side and certain numbers on another line, and I am pretty sure this is the list I had to take

(Testimony of Charles Spallino.)

care of with the blue pencil, I checked them off as they [899] came by.

Q. In other words, you checked off the names of the voters as they presented themselves?

A. Yes.

Q. They were given to you and you checked them off of this list?

A. I checked them off of this list as they came by.

Q. This is the list that you had, is that correct?

A. Yes.

Q. And these blue marks were put on here by you? A. Yes.

Q. What do those blue marks indicate?

A. Indicate that they came by to vote, they were eligible. In fact, I have one here that I marked challenged.

Q. What does that indicate?

A. Oh, I just put. He was challenged. He was a straw boss or something or other.

Q. In other words, so that I may have you clear, those where the blue marks appear——

A. Those are my blue marks.

Q. ——presented themselves to vote at the election in your particular line?

A. Yes, in my particular line, yes, sir.

Q. The balance of this document, it is your testimony that you did not have anything to do with? [900]

A. I didn't have anything to do with that line there.

(Testimony of Charles Spallino.)

Mr. Nicoson: I will modify my offer then to make Board's Exhibit 12 a document of only four sheets which are attached together by a paper clip. I show that to counsel and offer it in the record. I offer Board's Exhibit 12 in evidence.

Mr. Garrett: Objected to. No proper foundation laid, objected to as not the best evidence, objected to as not tending to prove or disprove any of the issues in this case, objected to as not relating to any matter between these unions parties to the contract and any employer with whom they have ever had or have contractual obligations, objected to as not proper redirect.

Mr. Collins: I object to the introduction of this in evidence upon the ground it is not proper redirect examination, upon the further ground it does not tend to prove or disprove anything in issue, so far as the case of the Pioneer Electric Company is concerned. This list does not purport to be, my understanding of its identification, the payroll of the Pioneer Electric Company. It purports to be——

Trial Examiner Kent: Well, it is my understanding, Mr. Collins, I am sure that the witness' testimony is clear on that point, that this is a payroll submitted by the company for the purpose of checking the ballot at this particular election, was it not? [901]

Mr. Collins: Frankly I don't know what it is, Mr. Trial Examiner. I have never seen it before.

(Testimony of Charles Spallino.)

I presume that is what it is, the payroll of the O'Keefe and Merritt Company, but what that can possibly tend to prove so far as the Pioneer Electric Company is concerned or the Pacific Cast Iron Pipe Company or any other company is very far afield.

The Witness: Where was the Pioneer Electric at that time?

Trial Examiner Kent: Never mind that.

Mr. Collins: May this answer be stricken? Just a moment.

Mr. Garrett: May I have the last answer read first?

Trial Examiner Kent: Read the answer, Mr. Reporter. Well, it was not an answer. It was a remark of the witness.

(The witness' remark read.)

Trial Examiner Kent: I believe that you asked to have that stricken, Mr. Collins?

Mr. Collins: I think I will leave that in there.

Mr. Garrett: I have no objection.

Trial Examiner Kent: What?

Mr. Collins: I think I will leave it in there.

Mr. Nicoson: As far as I am concerned it can stay in or go out. It was just a voluntary statement of the witness.

Mr. Garrett: I want it to stay in. I think it tends to show the state of mind of this witness.

Mr. Nicoson: Now, is there a ruling on this exhibit?

Trial Examiner Kent: I am not sure, does it

(Testimony of Charles Spallino.)

appear or doesn't it appear that it was submitted to the observers as the payroll to constitute the poll list at the election.

Mr. Garrett: It does not, your Honor, and there can be no such testimony from this witness.

Mr. Nicoson: It is agreed this is the list that he used to check with the voters down there.

Mr. Garrett: If that is a proper foundation, I don't know anything about foundations.

Mr. Nicoson: I will ask you one further question.

Q. (By Mr. Nicoson): You say Mr. McNinch was working with you at your table?

A. Yes, he was the observer for O'Keefe and Merritt.

Q. Did he also——

A. He went over the list with me, yes.

Q. As the men came up? A. Yes.

Q. And you did the markings, is that correct?

A. Yes.

Q. Is that true as to the—what C.I.O. observer was there? A. Mr. Ortega.

Q. Did he also do the same thing?

A. Yes. He did the challenging.

Trial Examiner Kent: I think I will reserve ruling until [903] it is shown that it was the payroll which was a list of names on the payroll submitted by the company on which the poll was taken. Mr. Collins made a sort of a half admission on that, but he qualified it further by stating that he was not sure. Of course I think it is obvious that is

(Testimony of Charles Spallino.)

what it was, but I am dubious that the record actually shows that.

Mr. Nicoson: Very well. Will you bear with me just a minute?

Trial Examiner Kent: Very well.

Mr. Nicoson: If your Honor please, it is about 11:00 o'clock. Do you want to take a short recess?

Trial Examiner Kent: Yes, you might take a 5-minute recess.

(Short recess taken.)

Trial Examiner Kent: You might proceed.

Q. (By Mr. Nicoson): At the time you acted as observer at the election, Mr. Spallino, did Mrs. Phoenix say you had to serve as the observer?

A. No.

Mr. Garrett: Wait a minute. Is that answer no?

Mr. Nicoson: Yes, the answer is no.

Mr. Garrett: Is that answer in the record?

Trial Examiner Kent: Yes.

Mr. Garrett: May it go off for the purpose of my objection, merely for the purpose of the objection? [904]

Trial Examiner Kent: Yes, you may. I will reserve the ruling.

Mr. Garrett: We want to object to that, of course, as being hearsay and not binding upon any party to the action.

Mr. Nicoson: I submit I have got a right to clear up his testimony.

Mr. Garrett: That was just about as leading

(Testimony of Charles Spallino.)

as any question that has ever been propounded to any witness.

Mr. Collins: I move that the question be stricken upon the ground that it calls for hearsay and that it is leading and calls for the answer, further, it is an attempt to impeach the witness. We have other testimony here where he said they made him do it.

The Witness: Mr. Roberts——

Mr. Collins: Just a minute.

Trial Examiner Kent: Never mind now.

Mr. Nicoson: I certainly have a right to rehabilitate this witness on redirect. That is the purpose of redirect, if counsel doesn't know.

Trial Examiner Kent: I think it is probably objectionable upon the ground it is leading. Reframe it.

Mr. Collins: There is no way in the world to reframe it. Mr. Trial Examiner, I submit this is an attempt to impeach the witness' testimony. He said before that he was forced into it, now he is saying that he was not forced into it. [905] It is not rehabilitating the witness, that is absolutely changing the record in this case.

Mr. Garrett: Our objection is sustained. I think it is perfectly proper for him to continue and we can object to the next question and get a ruling. I think that is the orderly way to proceed.

Trial Examiner Kent: I think counsel can properly ask what Mrs. Phoenix said at the time.

Mr. Garrett: Is that your ruling, your Honor?

(Testimony of Charles Spallino.)

Trial Examiner Kent: I sustained the objection to the present question in that regard.

Mr. Garrett: Merely to the form of the question?

Trial Examiner Kent: Yes, on the form.

Q. (By Mr. Nicoson): Did Mrs. Phoenix say anything to you with respect to serving as an observer down there, Mr. Spallino?

Mr. Garrett: Just a moment. Objected to as calling for hearsay.

Trial Examiner Kent: Well, as to that, I will restrict the answer to yes or no. I think it is a preliminary question.

Mr. Garrett: No objection.

Mr. Nicoson: Will you answer, Mr. Spallino?

The Witness: When she first met she didn't know who I was. [906]

Q. (By Mr. Nicoson): Did she say anything to you, Charles, at any time down there?

A. Well, the only time that——

Q. Did she, yes or no. A. No.

Q. Did any of the other Board agents down there say anything to you with respect to acting as observer? A. No.

Mr. Garrett: Now, just a moment. May the answer go out for the purpose of the objection?

Trial Examiner Kent: I think it is a preliminary question. The answer is no.

Mr. Garrett: It is not preliminary, if your Honor please, and it is now apparent, it is now apparent, it is now apparent that although it may have

(Testimony of Charles Spallino.)

seemed to the Trial Examiner, and I must confess I too was deluded, that the question is not a preliminary question. The question is asked only to bring out evidence by the answer to the question, and the question alone, bearing on an essential element in this case, to wit, the manner of the selection of this man as an observer and who he was selected for by the Board.

Mr. Nicoson: I don't mind telling you I was as much surprised by the answer of the witness as the rest of the people around here. It is the general practice for the Board agents to talk to the observers and tell them what [907] their duties are and all that sort of stuff.

Trial Examiner Kent: I would assume so.

The Witness: May I have the story just the way——

Trial Examiner Kent: Never mind now.

Mr. Nicoson: Wait just a minute. You answer the questions put to you.

Mr. Garrett: Objected to as calling for hearsay, not binding on these parties, not proper cross-examination.

Trial Examiner Kent: Objection overruled on that ground.

Mr. Nicoson: Read the question.

(Question and answer read.)

Q. (By Mr. Nicoson): Now, on page 415 of the record you were being questioned by Mr. Collins and you were asked with respect to Joseph Spallino. He was the plant superintendent of the Pioneer Electric

(Testimony of Charles Spallino.)

Company, was he not, during the war? Do you recall that? A. He was.

Q. Your answer to that, he was. I will ask you if you know what position Joe Spallino held, if any, prior to the war.

A. He was an assistant to Bill O'Keefe before the war at O'Keefe and Merritt.

Q. And I will ask you with respect to immediately after V-J Day, do you know what position Joe Spallino had?

A. Well, he was transferred back to O'Keefe and Merritt. [908]

Q. As what? A. As a superintendent.

Mr. Collins: All of which testimony I now move to strike on the ground it is a conclusion of the witness. What capacity any individual had at the time at O'Keefe and Merritt Company is entirely beyond the ability of this witness to testify to. It calls for a conclusion of someone, and this witness is obviously not the one to make that conclusion. He is only an employee.

The Witness: And Joe Spallino is my brother.

Mr. Nicoson: I submit that the employees of the factory know who their bosses are, particularly a plant superintendent. They may never have been up in the big boss' office and seen the papers which made him a plant superintendent, or they may not have been present at the time the big boss says, Joe, you are it, or Sam, you are it, but they work with him day in and day out, they know his capacity.

(Testimony of Charles Spallino.)

Certainly it is a matter of common knowledge to which any employee in the plant can testify.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Now, at page 438 of the record you were being questioned by Mr. Collins with respect to an argument or discussion that you had with your brother Joe Spallino just prior to going into Mr. Collins' office. You testified to the question, I think you testified that [909] I asked you what the trouble was, is that true?

"A. No, you wanted to know why he was arguing with me.

"Q. I am just asking my question, did I ask you what was the trouble? Is that true, did I say that to you? A. No."

My question now, Mr. Spallino, is what were you talking with Joe Spallino about immediately before going to Collins' office at that time?

Mr. Garrett: Wait a minute. Objected to as calling for hearsay, not binding on any of the parties to the contract.

Mr. Collins: Same objection.

Trial Examiner Kent: Objection overruled. The answer may be taken.

Mr. Garrett: Objected to, no proper foundation.

Mr. Nicoson: Will you read the question?

(Question read.)

A. At what time was that?

Q. (By Mr. Nicoson): I think the record indicates this is the first time you testified about going to Mr. Collins' office back in some date about two

(Testimony of Charles Spallino.)

years ago in one place, and 1942 some place in there.

Do you remember that occasion? A. Yes.

Q. All right.

A. Well, Joe Spallino had told me—— [910]

Mr. Garrett: Could I get a ruling on my objection that there is no proper foundation? In other words, to make my objection clear, I recall testimony as to a conversation that took place in Collins' office where the witness and his brother and Collins were present. I cross-examined at length on that. I thought the testimony on direct was not binding on us, but I conceded that a foundation was laid as to the fact, but I don't recall any foundation for any other conversation taking place at about that time except the one inside the office.

Trial Examiner Kent: Well, the record shows that Joe Spallino was a superintendent for O'Keefe and Merritt prior to the war, then became the superintendent for the partnership during the war, and is now back in O'Keefe and Merritt.

Mr. Collins: Mr. Trial Examiner, I submit that is not the record. The allegation is that Joe Spallino was assistant to Bill O'Keefe, who was the superintendent for O'Keefe and Merritt Company.

Trial Examiner Kent: I understand. That is the testimony.

Mr. Collins: And I think if I am permitted to examine even this witness he will also testify that O'Keefe had other assistants besides Joe Spallino before the war.

(Testimony of Charles Spallino.)

Mr. Garrett: That is not what I am directing my objection to. I am directing my objection to the lack of foundation [911] for this conversation which apparently took place on the same day as the conversation which was related, in Collins' office. I don't know who was there.

Mr. Nicoson: This is not in Collins' office.

Trial Examiner Kent: Your objection is proper. Reframe the question.

Mr. Nicoson: I must remind your Honor this is redirect examination and I can go into these matters brought out on cross-examination without all this folderol.

Trial Examiner Kent: Yes, but of course——

Mr. Nicoson: I will reframe the question.

Q. (By Mr. Nicoson): Did you have a conversation with Mr. Joseph Spallino just prior to going to Mr. Collins' office back at that time?

A. Yes.

Q. What did you say to him and what did he say to you?

Mr. Collins: Objected to——

Trial Examiner Kent: Who else was present, if anyone?

The Witness: There was Joe Spallino.

Q. (By Mr. Nicoson): Just the two of you?

A. Yes.

Mr. Collins: Objected to as no foundation having been laid.

Trial Examiner Kent: The answer may be taken. The objection is overruled. [912]

(Testimony of Charles Spallino.)

The Witness: At that time Joe Spallino was working for Pioneer Electric.

Q. (By Mr. Nicoson): Never mind that. What did he say to you and what did you say to him? Pay attention to the questions.

A. He says that he has been called by Collins and by Bill O'Keefe, they have been after him to find out why I went to the C.I.O. meeting. They want to see me up there now.

He said, "Please, for my sake, get out of this mess of going to these C.I.O. meetings, and things like that." He says, "They are after me." They are calling him. They called him two or three times and finally we walked up to Collins' office, and that is what took place at Collins' office. Bill O'Keefe and Collins were there.

Q. I didn't ask you what happened in there. I am just asking what you and Joe talked about before you got there. Now you stated, in answer to Mr. Collins' question on page 441, he asked you: "Did you at any time sign up with the A.F.L.?" Your answer to that was, "Yes, Johnnie Levascos came up to me and I signed."

Where were you when Johnnie Levascos came up to you and you signed?

A. I was near the superintendent's office there, somewhere-about there. I was either going or coming from the lunch stand. [913]

Q. Was that during working hours or off working hours?

A. That was during working hours.

(Testimony of Charles Spallino.)

Q. On page 500 of the record you were being questioned by Mr. Garrett. The question was put this way:

“Let me put it this way: How did it come about, in the first instance, while the plant was being picketed by the A.F.of L. that this Five and Over Club established a grievance committee and started to adjust grievances with management? How did it come about?

“A. Well, I guess on the appearance that the union was out there trying to organize the place, that suggested this. The ruling power of O’Keefe and Merritt suggested that we form a committee reporting to Bill O’Keefe, was the fellow we reported our grievance to for quite a while, so that would come into a big story.”

Who did you refer to there by “the ruling power” of O’Keefe and Merritt?

Mr. Collins: Objected to as it calls for the rank-est kind of hearsay.

Trial Examiner Kent: The answer may be taken.

The Witness: Collins always made the plans and suggestions for the different—well, organizations in the plant there, all politics and everything. It all came from his office.

Mr. Collins: I move it be stricken on the ground it is [914] a conclusion of the witness.

Q. (By Mr. Nicoson): Do you understand the question, Mr. Spallino?

(Testimony of Charles Spallino.)

Trial Examiner Kent: It may be stricken.

The Witness: The ruling——

Q. (By Mr. Nicoson): Do you understand the question? A. Well, the way I understand——

Q. Do you? Yes or no. A. Not truly.

Mr. Nicoson: Will you read him the question, please?

Mr. Garrett: The objection was sustained.

Mr. Collins: The answer was stricken, counsel.

Mr. Nicoson: Did you sustain the objection?

Trial Examiner Kent: No, I struck the answer.

Mr. Nicoson: What is your ruling on the objection, then?

Trial Examiner Kent: Read the question. My ruling was that the answer might be taken, I was quite positive. Read the record.

Mr. Nicoson: That is what I thought.

(The record was read.)

Mr. Collins: Objected to as it calls for the rankest kind of hearsay and a conclusion of the witness.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: I submit that the ruling power of O'Keefe [915] and Merritt Company would be the stockholders or president or some duly authorized official.

Mr. Nicoson: It certainly wouldn't be improper to have this record show to what persons, if any, he was referring when he used the term "ruling power" of O'Keefe and Merritt.

Trial Examiner Kent: No. I think your objec-

(Testimony of Charles Spallino.)

tion could be well covered by argument, in the event——

Mr. Nicoson: That is all I want to know. He asked the question and he got that answer. I want to clean it up.

Q. (By Mr. Nicoson): Who did you refer to as “the ruling power” when you made that answer?

A. Well, the ruling power, the way it works, I have to explain it in my way——

Q. Never mind. Did you have in mind any particular person when you made that remark or gave that answer? A. Collins always——

Mr. Collins: Just a moment.

Q. (By Mr. Nicoson): Did you? Yes or no? Will you please quit arguing with me, Mr. Witness, and pay attention to the questions I put to you and answer them as simply as you can? Will you do that? A. I will try. [916]

Q. All right. Please do. Did you, when you made that answer about the ruling power, have reference to any particular person? Answer yes or no.

A. That is pretty deep for me. I can't explain just who this ruling power is.

Q. Did you or did you not have reference to any particular persons when you used the term “the ruling power” of O’Keefe and Merritt?

A. Well, between Collins and Bill O’Keefe is the ruling power of O’Keefe and Merritt. That is the only way I can explain that.

Q. Now, on page 396 of the record, you were

(Testimony of Charles Spallino.)

being questioned by Mr. Tyre. You were asked these questions and you made these answers:

“Q. On this particular occasion at eight o'clock in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?”

Mr. Nicoson: Maybe I had better go back a little piece and read you the rest of it.

Q. (By Mr. Nicoson): Beginning on page 395. I dislike to read all of this, but I think it is the only safe way to do it.

“Q. (By Mr. Tyre): Mr. Spallino, did you have a conversation with Mr. White on this morning prior to eight o'clock? [917]

“A. Yes.

“Q. Will you state what that conversation was, namely, what you stated and what he stated?

“A. Well, I told him that to have these men ready at—that this fellow would be there, would be there at eight, to have the boys ready at eight o'clock, to be sure that those men did get out there.

“Q. Did you tell him who you meant by this fellow?

“A. Mr. Blaney. I didn't tell him it was Mr. Blaney. I told him it was the fellow from the Teamsters' Union. I didn't name him.

“Q. Did such a meeting take place?

“A. Yes.

(Testimony of Charles Spallino.)

“Q. Where did it take place?

“A. Right across from the shipping, right in front of the shipping department.

“Q. How long did it last?

“A. From thirty to forty minutes.

“Q. Were you there?

“A. Yes, I was present.

“Q. Was Mr. Blaney there?

“A. The first time Mr. Blaney was not there. He sent a fellow there.

“Q. On this particular occasion at eight o'clock [918] in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?

“A. At Mr. Collins' office?

“Q. No, no, at this particular meeting at the shipping department, the meeting you are now describing.

“A. Was Mr. Blaney there you say?

“Q. Yes.

“A. No, he was not there, at this first meeting.”

I will ask you if there was another meeting after that of the shipping department employees?

A. When Mr. Blaney wasn't there? Yes, Mr. Blaney wasn't there and once Mr. Blaney himself came there with two fellows.

Q. Which meeting did Mr. Blaney attend, the first or second? A. The second.

Q. Were you present at that second meeting?

A. Yes, I was.

(Testimony of Charles Spallino.)

Q. Tell us what occurred at that time?

A. Well, Mr. Blaney——

Q. First, who all were there that you recall?

A. Well, most of the truck drivers, all the truck drivers. Some had been working in other departments and were told about this meeting and they were—I don't recall their names—like Johnny Miles, or Jack Miles, rather. Jack Miles was [919] working for the generator department. He was attending that one meeting. I can't remember all their names.

Q. Where did it take place?

A. At the same place, right across from the shipping department.

Q. You say right across. Was that in the street or across the street?

A. There is a parkway there, where they park their cars. It was kind of cold that morning and we went out toward the sun.

Mr. Collins: It was outside the building?

The Witness: Outside the building, yes.

Mr. Garrett: The witness has already testified about this meeting, testified what was said, testified where it was.

Mr. Nicoson: I don't think that is true.

Mr. Garrett: He testified to it on direct, too.

Mr. Tyre: I was just going back over it on cross.

Mr. Collins: He said there were two meetings.

Mr. Garrett: Yes, he testified about the one, about the one when Blaney was there. I can find it in my notes.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I do not have a distinct recollection, but I do have a recollection he did go into that on direct.

Mr. Nicoson: I must remind your Honor and also counsel [920] that you stopped me from going into it on direct. I now propose to go into it, as a matter of redirect. It has been brought up by other counsel.

Trial Examiner Kent: I suppose it will save time. I think the testimony will be brief, limited presumably to two or three questions. You may proceed.

Mr. Nicoson: Read the question.

(The question was read.)

Q. (By Mr. Nicoson): What time did this take place? A. It started at 8:00 o'clock.

Q. How long were you there?

A. Between 30 and 40 minutes.

Q. Was Mr. Blaney there? A. Yes.

Q. What did Mr. Blaney have to say?

A. Well, he explained the Teamsters Union more clearly to the boys there, that were interested in the Teamsters Union.

Q. Anything further? A. No.

Q. I will ask you to state, if you know, what is the beginning working time for the shipping department employees? A. 8:00 o'clock.

Mr. Nicoson: No further questions.

(Testimony of Charles Spallino.)

Recross-Examination

By Mr. Tyre:

Q. I have just a few questions. You [921] testified earlier, Mr. Spallino, that you had not seen Mr. Despol of the Steelworkers Union until after the election. Which election were you referring to when you made that statement?

A. Well, they had a trial election there, which they had a box out there and they had a flag and they—the night before they had given us a sample ballot. [922]

Q. Who do you mean by “they”?

A. The C.I.O., the Steelworkers. They had a sample ballot out there and a trial voting there.

Mr. Nicoson: I object to that, unless he fixes the time.

The Witness: That was within a couple of weeks before the real election. About two weeks, I would say, before the government election or the National Labor Relations Board election.

Q (By Mr. Tyre): You said you hadn't seen Despol after the election. You were referring then to this last election you have just described?

A. Yes.

Q. Before the time when Mr. Levascos made this speech, before the Five and Over Club on election day, about the election which was coming up that same day, had you ever attended any meetings or did you know of any meetings of the Five and Over Club where any speech had been made by any unions?

(Testimony of Charles Spallino.)

Mr. Collins: Just a moment. I will object to that on the ground it has been asked and answered. He testified that the Five and Over Club has fought unions from the very beginning, and there have been lots of speeches there.

Mr. Tyre: On cross-examination he testified that anybody could make a speech before the Five and Over Club. [923] I am asking him whether or not before this particular day anybody had made a speech about unions before the Five and Over Club.

Trial Examiner Kent: The answer may be taken.

The Witness: During the time I held office there was no speeches, to my knowledge.

Q. (By Mr. Tyre): No speeches about what?

A. Of union activities, because I refused to have anything to do with them.

Q. When you and Mr. Levascos were up in Mr. Collins' office, just before Mr. Levascos and you went out to get the drink on the day of the election, do you remember whether or not Mr. Collins told you and said to you, that is, "You can join the union or work for any union that you want"?

A. No, I don't remember him saying that.

Q. Can you state definitely whether or not he did tell you that at that time?

A. I am not so certain at that time that he did say that.

Q. Will you tell us what time of the meeting where Mr. Levascos made the speech to the Five and Over Club began?

A. It was in the neighborhood of 4:10 and 4:15.

(Testimony of Charles Spallino.)

Q. Was that before the working hours were completed for that day? A. That is right.

Q. You testified, when Mr. Collins was asking you questions, [924] Mr. Spallino, that Mr. Collins did tell you that the company could not discharge anybody legally for union activities. Did he say anything else to you at that time besides that particular statement?

A. Yes, he could fire you for spitting on the floor or for anything else; not for union activities.

Q. You testified that the newspaper of the Five and Over Club is printed outside. How long has that newspaper been published at the plant?

A. Oh, I would say in the neighborhood of a couple of years.

Q. And you say it was not handled by the club, but by one man from the company. Who were you referring to as that one man?

A. Bill Cole, Collins' brother-in-law, handled that paper.

Q. How long has he been handling that?

A. Since he was president of the Five and Over. It was his idea. He put it through.

Q. You have been discussing on several different occasions, Mr. Spallino, a certain torture room. I think you said that there is a key to this room. Can you tell us whether or not that room is ordinarily locked or whether it is ordinarily open?

A. Apparently it was locked, because when I went there with [925] Johnny, he opened it with a key.

(Testimony of Charles Spallino.)

Q. Had you ever been in that room before the time Mr. Levascos took you up there?

A. No. That room at one time was a relation of O'Keefe's, he had his—that was his home. He lived in that room before he died. But it has been changed since then. The bed has been taken out and there is a desk and telephone and a couple of chairs.

Q. Since that time, you have not been in the room before you went in there with Mr. Levascos, is that right?

A. That is right. That is the first time.

Q. That is all I want to know. I think you testified that you have never, or you testified you hadn't distributed any cards for the C.I.O. At the time of this election, had you ever distributed any cards for the C.I.O.?

A. Yes, I had. I had said yes that time Mr. Garrett had questioned me. And I had a lot of thinking to do. I wanted to——

Q. When did you distribute any cards?

A. It was before that Sunday meeting that I went to the C.I.O.

Q. Where did you distribute them?

A. In one of the lavatories in the plant.

Q. About how many cards did you distribute?

A. About six or eight. [926]

Q. Have you distributed any others besides those six or eight? A. Not in the plant.

Mr. Tyre: That is all.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, while Mr. Cole was the president of the Five and Over Club, do you recall in his capacity as president that he bought some turkeys? A. Yes.

Q. Do you recall the year the turkeys spoiled?

A. That was——

Q. Just answer my question. Do you recall the year? A. Oh, yes.

Q. Do you know whether or not the Five and Over Club paid for the spoiled turkeys or the O'Keefe and Merritt paid for them?

Mr. Nicoson: Objected to, first, on the ground it is immaterial; and second, it is improper recross-examination.

Mr. Collins: I submit I have no objection to disclosing my purpose. This witness testified when he wasn't president the company bought the turkeys and when he was president the company wouldn't buy the turkeys.

Trial Examiner Kent: You may inquire.

Mr. Collins: This witness knows, as a matter of fact, the turkeys were spoiled and they weren't paid for by the company. [927]

Mr. Garrett: I object to that as being incompetent, irrelevant and immaterial.

Trial Examiner Kent: You may answer.

The Witness: Will you repeat that?

Q. (By Mr. Collins): What happened to these turkeys, did any of them ever spoil?

A. Well, yes, they spoiled; at that time I was sick in bed and they brought me my turkey at home.

(Testimony of Charles Spallino.)

Q. The turkeys were paid for by the Five and Over Club that year; weren't they?

A. That is the only year he ever gave any turkeys.

Q. Cole was president at that time?

A. Yes.

Q. There was \$1000.00 or more of turkeys spoiled that year? A. I don't know exactly.

Q. How much did it cost you the year you paid for it?

A. It was somewhere around twenty-one or twenty-four hundred.

Q. The year Cole bought them, the whole shipment spoiled? A. Yes; through his fault.

Q. I don't care whose fault it was. They spoiled that year? A. Yes.

Q. And the club paid for it?

A. I don't know who paid for it. I wasn't an officer at that time; I couldn't say. [928]

Q. You didn't hear the company paid for them that year?

A. I heard the company had put \$900.00 towards the turkeys that year.

Q. The year they spoiled? What year are you talking about?

A. That is the only year he ever gave turkeys, I recall.

Q. Did you ever hear of the company buying some 20-year men watches?

Mr. Garrett: Objected to; incompetent, irrelevant and immaterial.

(Testimony of Charles Spallino.)

Mr. Nicoson: I will restate my objection as being immaterial; not proper recross.

Mr. Collins: The testimony of this witness, Mr. Trial Examiner, was the company bought pins or something like that. And I am trying to find out if the company buys watches for the 20-year men whether they are in or out of the Five and Over Club.

Trial Examiner Kent: There is some doubt as to what the record contains on this matter, in my mind. Yet it will be short. The answer may be taken.

Mr. Collins: I only have about three more questions, Mr. Trial Examiner.

Q. (By Mr. Collins): What is the answer?

A. What is the question?

Q. Did the company buy for 20-year men watches?

A. Well, one time I did see them present watches. [929]

Q. They were given to them whether they were in the Five and Over Club or not; isn't that so? You worked there 20 years, you don't have to be in the Five and Over Club; do you?

A. That is right.

Q. Do you know, of your own knowledge now—and be sure you understand this—do you know, of your own knowledge—not what you heard or guessed, but of your own knowledge—do you know whether or not at the time you talked to Joe, prior to coming up to my office, whether or not he was

(Testimony of Charles Spallino.)

still on the payroll at the Pioneer Electric as a superintendent?

A. The first time when I went to that Sunday meeting?

Q. No. Not the first time. I am now talking about the second time, just before you came to my office. I will reframe the question, Mr. Spallino. Do you recall testifying a moment ago, in response to a question of Mr. Nicoson's, that Mr. Joe Spallino was superintendent of Pioneer Electric Company and then when the war was over he became superintendent of the O'Keefe and Merritt Company, and now he is again superintendent of the Pioneer Electric Company? Do you recall that testimony? A. That is right.

Q. Now, then, I am going to ask you, do you know whether or not, of your own knowledge, he was ever taken off the payroll of the Pioneer Electric Company after the war ended? [930] Of your own knowledge, now.

A. You mean the checks he has been receiving?

Q. Do you know, of your own knowledge, whether or not he wasn't always the superintendent of the Pioneer Electric Company, from the war up to now?

A. I know one conversation I had with my brother——

Q. Just answer my question.

A. How else can I answer your question?

Q. I want to know, do you know of your own knowledge. You can answer that yes or no.

(Testimony of Charles Spallino.)

Mr. Tyre: You can explain it if you answer it yes or no.

The Witness: I will have to explain it.

Q. (By Mr. Collins): Answer my questions, first. Do you know, of your own knowledge?

A. Well, I guess—I guess the way laws are you have to just answer questions the way they are put to you.

Trial Examiner Kent: Do it. If you don't think that is a full and complete answer, I have told you before you can amplify and explain it.

The Witness: It was not my own knowledge.

Q. (By Mr. Collins): That is all I want to know. Getting down to these meetings we had at the Five and Over Club, haven't you heard me make speeches about the union down there in the meeting of the Five and Over Club? [931]

A. You haven't made many speeches lately; the only speech you made——

Q. Just a minute.

Mr. Tyre: Just a second. The examination by me was not "ever," but "since" he was president. That was his only testimony. He is now qualifying his answer.

Mr. Collins: That is not the statement, Mr. Tyre. This witness said that while he was president none of these things happened.

Q. (By Mr. Collins): I want to know if you ever heard any union speeches in there.

A. Yes, during the time your brother-in-law was president.

(Testimony of Charles Spallino.)

Q. So there have been union speeches made at the Five and Over Club? A. Yes.

Q. Besides the one Mr. Levascos talked about?
A. Yes.

Q. Now, then, showing you this certificate on conduct of election——

Mr. Garrett: One moment. Before me get into something else, will you object, Mr. Collins, if I call the attention of all and sundry here present the hour of 12:00 noon has arrived?

Trial Examiner Kent: According to my watch it is two minutes of. [932]

Mr. Collins: I want to ask one question.

Mr. Garrett: I can't even fuss for two minutes. It is a hard bunch.

Trial Examiner Kent: It is not high noon yet, according to my watch.

Q. (By Mr. Collins): Calling your attention to certificate of conduct of election, I want to ask you, were you working for the C.I.O., the O'Keefe and Merritt Company or the American Federation of Labor when you signed your name and acted as a watcher at that poll?

A. I had refused to accept that job at that time. I was working——

Q. Answer my question. It is a simple question. I will reframe it. Were you at the time you acted as watcher at that election working for the O'Keefe and Merritt as their agent or the American Federation of Labor or the C.I.O.?

(Testimony of Charles Spallino.)

A. I think I made a statement I have been C.I.O. at heart all the time.

Q. You were working for the C.I.O. when you were watching for that election? A. Yes.

Q. When you said a while ago no one from the Board——

Mr. Garrett: One moment. It is now becoming 12:00 o'clock.

Trial Examiner Kent: I think Mr. Collins only has one [933] or two questions. I think we might dispense with them.

Mr. Garrett: My point is if the attorneys here want to have—I think we should adjourn.

Mr. Nicoson: We are wasting more time talking about it than if you let him ask the questions.

Mr. Garrett: We will be here 10 minutes from now.

Mr. Collins: No, you won't.

Trial Examiner Kent: Proceed.

Q. (By Mr. Collins): Do I understand your testimony now to be that no one from this Board appointed you to act as a watcher at that poll?

A. No.

Q. They didn't? A. No.

Q. Then when you said that somebody from the Board forced you to act as a watcher, that was a mistake?

A. May I explain how that happened?

Q. Answer my question.

Trial Examiner Kent: Go on. Tell it.

(Testimony of Charles Spallino.)

The Witness: Mr. Roberts run into me in the aisleway and he grabbed me—the government people were with him—to hurry me up, to get at the table there to take over my position as an observer.

The government man pins a button on me and drags me over to that table, you might as well say. The people were [934] out there waiting, to get started.

Q. (By Mr. Collins): Do you want to change your testimony now to say the government man did push you over there?

A. I didn't name any government man to say that.

Mr. Collins: That is all.

(Witness excused.)

Trial Examiner Kent: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [935]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: On the record. We might proceed. Call the next witness, please.

Mr. Nicoson: Mr. Daniel P. O'Keefe.

DANIEL P. O'KEEFE

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. You are Mr. Daniel P. O'Keefe, are you not?

A. Yes, sir.

Q. Do you have any connection with the O'Keefe and Merritt Company? A. President.

Q. Is the O'Keefe and Merritt Company a California corporation? A. Yes.

Q. The O'Keefe and Merritt Corporation succeeded a partnership composed of Daniel P. O'Keefe and Robert J. Merritt, did it not?

A. Yes.

Mr. Garrett: Wait a minute. May the answer go out for the purpose of my objection? May I have the question. [936]

(The question was read.)

Mr. Garrett: May the witness be instructed not to answer, so counsel can interpose objections, until there has been an opportunity for objection? May the witness be instructed not to answer until there has been an opportunity for an objection.

Trial Examiner Kent: Well, a reasonable opportunity. A slight delay after the question is asked, yes.

Mr. Garrett: I will object to that as calling for a conclusion, and object to it as leading. This at-

(Testimony of Daniel P. O'Keefe.)

torney for the Board is calling this witness as his own witness. He can't lead him.

Mr. Nicoson: I am a little surprised at Mr. Garrett for making that sort of an objection, in view of the fact that he practiced law in the State of California. I will call his attention to Section 2055 of the Code of Civil Procedure, which provides that where the opposite party calls an officer, the president, superintendent, or managing agent of a corporation which is a party, either pro or con, that he will be examined as if on cross-examination, the Examiner not being bound by his answers, that he may rebut and impeach the witness if he so desires.

Mr. Collins: I wish to call your attention, Mr. Trial Examiner——

Mr. Garrett: Just a moment. I think that probably if [937] counsel wants to do that, this is the first time in my experience I have ever seen the attorney for the Board try to proceed in that way. I think the witness ought to be excused so we can argue the legal points involved.

Mr. Nicoson: I have no objection.

Mr. Collins: I have no objection.

Trial Examiner Kent: No objection. Of course, that is a general rule, I think generally statutory except that under some statutes it is customary for the interrogation to be carried on as though the counsel were examining his own witness, then if it appears that the witness might be—well, let me use the word arbitrary, which is not just the one I am

(Testimony of Daniel P. O'Keefe.)

seeking, then he can proceed by way of cross-examination. However, as to this particular question, in view of Mr. O'Keefe's position, I think the question, this particular question under these circumstances I can't see would be substantially objectionable, anyway.

Mr. Garrett: May I have the question read again, your Honor?

Trial Examiner Kent: Read the question.

(The question was read.)

Mr. Garrett: Well, your Honor, you will concede that this is leading. The only question is whether counsel, who called this witness on direct, has a right to lead because of some theory the witness is adverse. It is leading; isn't [938] it? Could it be anything else but leading and suggestive? Furthermore, it calls——

Trial Examiner Kent: I think it is just a foundation question. I can't see myself how it would be possibly harmful.

Mr. Garrett: It calls for a legal conclusion.

Trial Examiner Kent: Here is the interpretation I put to it: Originally there was a partnership, and that was succeeded by a corporation. Now, what you are apprehensive of—I assume, I may be wrong, maybe I am guessing too much—the partnership came again into being.

Mr. Garrett: Well, all right.

Trial Examiner Kent: Well, let's go on.

Mr. Garrett: In the first place, it is leading. In

(Testimony of Daniel P. O'Keefe.)

the second place, I don't think anyone here will deny it calls for a conclusion, a legal conclusion.

Trial Examiner Kent: I think in view——

Mr. Garrett: For which the witness hasn't been qualified to give.

Trial Examiner Kent: I think, in view of Mr. O'Keefe's status——

Mr. Collins: Mr. Trial Examiner, I should like——

Trial Examiner Kent: ——he is able to make that sort of a conclusion.

Mr. Garrett: He is able to say that a corporation has [939] all the obligations of a successor who is a partnership I think would take an acute lawyer to make that statement, after a thorough bringing out of all the facts.

Trial Examiner Kent: Well, I think you can clear up your particular objection by way of cross-examination.

Mr. Garrett: I will object. I will object at the outset of these proceedings. I have a contract here I am trying to protect. I will object at the outset of these proceedings——

Trial Examiner Kent: In view of your statement, Mr. Garrett, I think I will excuse the witness. I would like to have a little discussion——

Mr. Garrett: Let counsel show where 2055 applies.

Trial Examiner Kent: ——about the particular statute under *which are* proceeding.

You might step out in the hall, Mr. O'Keefe, a few minutes.

(The following proceedings were had outside the presence of the witness:)

Trial Examiner Kent: Off the record.

(Discussion off the record.) [940]

Trial Examiner Kent: Back on the record.

Mr. Nicoson: What is your ruling now?

Trial Examiner Kent: The ruling is that you should proceed by way of—in the ordinary fashion, direct examination. If it appears that the witness is evasive, why then I think counsel would be entitled to proceed by way of cross-examination.

Mr. Tyre: Mr. Examiner, I would like to call your attention to something about Section 205? that Mr. Garrett has either inadvertently neglected to call to your attention or perhaps he didn't cover the subject at all. He said this is a criminal or quasi criminal action, and for that reason——

Trial Examiner Kent: That was off the record.

Mr. Tyre: 2055 does not apply if this is a criminal or quasi criminal action. There is no reason in the world why 2055 should not apply. It happens every day in the week where there are two parties having a matter between them involving an injunction, on party seeks an injunction against the other, just as in the case before your Honor one party seeks an injunction against the company. The only way that injunction can be enforced by the civil courts is by contempt of court, and likewise here it will be enforced by the Circuit Court of Appeals, decree. The situation is identical here as in the

California courts, an injunction proceeding, like any other proceeding which is civil, the plaintiff has [941] a right to call the officer of the corporation as a witness whom he can ask questions as on cross-examination. In other words, there isn't any reason in 2055 in this case why he cannot ask this witness leading questions if he wants, as though he were called on for cross-examination rather than direct testimony. As a matter of fact, we know Mr. O'Keefe represents the O'Keefe and Merritt Company, we know he is the respondent in this matter and he is familiar with these facts. It will save a lot of time as well as abide by Section 2055 of the Code of Civil Procedure by permitting the type of question Mr. Nicoson is now asking. I submit that you should reconsider the ruling for the reasons I have stated, and permit Mr. Nicoson to proceed along that line.

Trial Examiner Kent: Well, I treated the original question, of course, as a preliminary question and a question I thought might be time-saving. I do think, though, the general purposes, to begin with, the statute is not expressly applicable. This is not an adversary proceeding.

Mr. Nicoson: Mr. Examiner, I would like to ask you, on the record, when the United States Government proceeds against any party, what kind of a proceeding is that? Is that an adversary proceeding or not?

The United States Government has issued a complaint against O'Keefe and Merritt. They are out to sustain that complaint through me as their attor-

(Testimony of Daniel P. O'Keefe.)

ney. The proceeding of [942] the United States Government against O'Keefe and Merritt, if you can say that is not an adversary proceeding, but merely a matter of investigation, I beg to differ with you. There is a line of cases which involves the so-called representation proceedings decided in the Supreme Court and in various Circuit Courts, and holds that is not an adversary proceeding, but is a mere investigation under the Act by the National Labor Relations Board.

I will challenge counsel here or the Trial Examiner or anyone else to ever show me in any decision of any court in this land where a proceeding like this was ever held not to be adversary. If it is necessary I will take the time to look it up. I can show you decision after decision which holds it is adversary. You have ruled, though. The record shows my exception.

Trial Examiner Kent: Having called the witness, proceed by way of direct examination. If the witness appears evasive or arbitrary in answering questions, then you may ask the rule be otherwise changed and proceed by way of cross-examination.

Q. (By Mr. Nicoson): Mr. O'Keefe, have you ever seen me before in your life?

A. Have I what?

Q. Have you ever seen me before in your life?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial. [943]

Mr. Collins: I join in that objection.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The answer may be taken.

Mr. Garrett: Frivolous; utterly frivolous.

The Witness: I don't remember having seen you.

Q. (By Mr. Nicoson): Do you remember ever having a conversation with me about any phase of this case?

Mr. Garrett: Same objection.

Trial Examiner Kent: You may answer.

The Witness: No.

Q. (By Mr. Nicoson): I will ask if you know whether or not there is a building located on Olympic Street known as 3700 Olympic Street.

A. Yes.

Q. You know that? A. Yes.

Q. Do you know who occupies that building?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial; not tending to prove or disprove any of the issues in this case.

Mr. Collins: I join in that objection.

Mr. Garrett: I refer you to the fact the complaint speaks as of its date, not as of the present date.

Trial Examiner Kent: Is that the former location of the business or the present location?

Mr. Nicoson: It is the present location; it is the location [944] of the whole business.

Trial Examiner Kent: All right. The answer may be taken. I think this is purely preliminary.

Mr. Garrett: It is a leading question. It calls for a conclusion that may be damaging to my litigants here.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: How can it be damaging?
That is the reason I asked the question.

Mr. Garrett: It calls for a conclusion.

Trial Examiner Kent: Let's be realistic, anyway.

Mr. Nicoson: It is about time.

Mr. Garrett: I ask for a ruling on my objection.

Trial Examiner Kent: The objection is over-ruled. The answer may be taken.

The Witness: What was the question, now?

Mr. Nicoson: Read the question to the witness.

(Question read.)

Mr. Garrett: May that question be answered yes or no?

Trial Examiner Kent: Well, in view of the situation and the information I got by way of an answer to counsel, I see no reason why the witness can't give a full answer.

Mr. Collins: Does counsel wish to know who all the employees are that occupy it, or the various companies that occupy it?

Mr. Nicoson: I don't think that is a question I need try to answer. I don't propose to let either one of these [945] counsel examine this witness for me.

Trial Examiner Kent: The witness may answer.

Mr. Garrett: Objected to as calling for a conclusion. May I have a ruling, your Honor?

Trial Examiner Kent: Yes. He may answer.

Mr. Nicoson: Will you now read the question?

Trial Examiner Kent: Your objection is over-ruled.

(Testimony of Daniel P. O'Keefe.)

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): Who occupied that building, Mr. O'Keefe?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: O'Keefe and Merritt Company, Pioneer Electric Company. I don't remember whether Service, Incorporated, is still there or not. They were for a long time. Whether they are still in there or not I don't remember.

Q. (By Mr. Nicoson): Now, you are acquainted with the building; are you not? A. Yes, sir.

Q. Will you describe the boundaries with relation to streets by name?

A. Bounded by Olympic, Los Palos, Union Pacific and—— [946]

Q. Calzona? A. Calzona.

Q. In relation to those you started on Olympic and you have gone around the building as if you were walking to your right at all times; is that correct? A. That is right.

Q. I will ask you if you know who are the officers of the O'Keefe and Merritt Corporation besides yourself. A. Yes.

Q. Who are they? A. R. J. Merritt.

Q. And what capacity?

A. And W. J. Boyle.

Q. W. J. Boyle. W. J. Boyle is the vice-president? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. And Mr. Merritt is secretary and treasurer; is that correct? A. Yes.

Q. I will ask you, if you know, who are board of directors? Who composes the board of directors?

A. Yes.

Mr. Garrett: May I have a continuing objection to this line of questioning?

Trial Examiner Kent: Yes.

Mr. Garrett: Incompetent, irrelevant and immaterial. [947] On the ground that the present status of the corporation has no bearing on or will tend to prove or disprove any of the issues in this case.

Trial Examiner Kent: The record may so show you have a continuing objection.

Q. (By Mr. Nicoson): Now, did you tell me you knew who the directors were, Mr. O'Keefe?

A. Yes.

Q. Will you please name the board of directors?

A. Mr. R. J. Merritt, W. J. Boyle, Lucile Merritt, W. J. O'Keefe and myself.

Q. Now, with respect to the corporate officers which you have named, have they been the corporate officers throughout the life of the corporation?

Mr. Garrett: Just a moment, just a moment. May I have the question reread, please?

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: In view of your Honor's ruling, I point out that that question is leading.

Trial Examiner Kent: That is the way you take it.

Mr. Garrett: I also think it is incompetent, irrelevant and immaterial, not being confined to any of the times at issue in this case.

Trial Examiner Kent: He may answer. [948]

Q. (By Mr. Nicoson): Do you understand the question?

A. As I understand, you want to know if they are the same directors that have been there since we started in business.

Q. I will ask you about the directors, but my question went only to the officers.

A. Officers, no.

Q. Have there been other officers besides yourself, Mr. Lewis J. Boyle and Robert J. Merritt?

A. Yes.

Q. Have there been other directors besides those five which you have named, being yourself, Lewis J. Boyle and Robert J. Merritt, Lucille Merritt and W. J. O'Keefe? A. Yes.

Q. In January of 1942 do you recall who were the corporate officers at that time?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial, and not having any tendency to prove or disprove any of the issues in this case.

Trial Examiner Kent: The answer may be taken.

A. I am not sure that I remember.

Q. (By Mr. Nicoson): Do you recall who the

(Testimony of Daniel P. O'Keefe.)

board of directors were at that particular time?

A. No.

Mr. Garrett: Same objection, and the further objection it is not the best evidence. [949]

Q. (By Mr. Nicoson): Do you recall, Mr. O'Keefe, during the months of September, October, November and December of 1945 who the corporate officers of O'Keefe and Merritt were? A. Yes.

Q. Who were they?

A. 1945, corporate officers, that would be as stated, Mr. Merritt, R. J. Merritt, W. J. Boyle, Lucille Merritt, Bill O'Keefe and myself.

Q. You have named now the board of directors, haven't you? A. Yes, that is right.

Q. All right, now. A. The officers——

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial. What would be the materiality to this inquiry? There is not the slightest.

Trial Examiner Kent: I will overrule the objection. It is relevant and material.

Mr. Garrett: I wonder why, on what undisclosed theory, can the composition of the board of directors be relevant to any issues in this case.

The Witness: You said I was to answer?

Trial Examiner Kent: Yes, you may answer.

The Witness: R. J. Merritt, W. J. Boyle and myself.

Q. (By Mr. Nicoson): And you, of course, during that period of time were the president, is that correct? A. Yes. [950]

Q. And Mr. Boyle was the vice president and

(Testimony of Daniel P. O'Keefe.)

Mr. R. J. Merritt was secretary-treasurer.

A. Yes.

Q. How long have you, Mr. O'Keefe, been the president of the O'Keefe and Merritt Corporation?

Mr. Collins: Objected to as immaterial.

Mr. Garrett: Same objection.

Trial Examiner Kent: You may have a continuing objection. The answer may be taken.

Mr. Garrett: Thank you.

The Witness: I don't know. A number of years, if that will answer it. I don't know.

Q. (By Mr. Nicoson): Will you approximate from say the present backward, the approximate number of years you have been president?

A. I think around twenty-eight or nine, somewhere around there, but I don't remember.

Q. It is a fair statement to say that you are acquainted with the business of the O'Keefe and Merritt Corporation, is it not?

Mr. Garrett: Objected to as leading and suggestive. You know, I don't believe in letting the camel get his head under the tent.

Trial Examiner Kent: You may answer. [951]

The Witness: Well, I presume that is how I hold my job.

Trial Examiner Kent: In other words, you are modest about it.

Q. (By Mr. Nicoson): During the years that you have been president of the O'Keefe and Merritt Corporation, has the kind of business that it engaged in been changed in any substantial effect?

(Testimony of Daniel P. O'Keefe.)

A. That word substantial is what would stick me.

Q. On the 1st of September, 1945, what kind of business, if any, was the O'Keefe and Merritt Corporation engaged in?

A. As we usually refer to business, that is when you sell something, and we sold nothing, I should say, in that time that you referred to.

Q. Were you making anything at all during that time? A. In September, 1945.

Q. That is correct.

A. No, I wouldn't think so.

Q. Going back to January 1st, 1940, what kind of business, if you know, was O'Keefe and Merritt engaged in at that particular time?

Mr. Collins: Mr. Trial Examiner, I have not been making any objections because I would like to get Mr. O'Keefe out of here, but I don't see where we are getting anywhere with going back into matters that transpired before the issuance of this complaint. It seems to me we are going very far [952] afield in going back to matters which exceed the farthest recollection of the most adverse witness. I submit this is entirely immaterial, does not tend to prove or disprove anything in this case.

Mr. Nicoson: Well, if the boys insist on my doing it the hard way, I will try to do it the hard way. I started out to do it the easiest way that I could think of, so as to finish up with Mr. O'Keefe so that he could get back to whatever business he would like to go back to.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: Among other things, I believe that counsel is getting the facts to show whether or not the business is concerned with commerce within the meaning of the Act.

Mr. Garrett: There is no issue on that.

Mr. Collins: Mr. Trial Examiner, I offered a perfectly legal, normal objection to the testimony which is about to be adduced by counsel for the Board, and I cite his conduct as misconduct, doing it the hard way, if the boys wish to make objection he is going to do it the hard way. Let's just do it the legal way and get out of here.

Trial Examiner Kent: I think he is trying to proceed to build up the kind of record the Board expects.

Mr. Garrett: I want to make it clear as far as Mr. O'Keefe is concerned I am not concerned with getting him out of here. He has been fighting my unions for 15 years, and I don't care anything about his convenience. [953]

Trial Examiner Kent: It is true that the answer generally I think admits some of the jurisdictional facts. It is customary and proper where jurisdiction has to be shown, it is customary to get the jurisdictional facts in the record.

Mr. Garrett: I don't think there is any issue of jurisdiction.

Mr. Collins: Not at all. I admitted we are engaged in interstate commerce within the meaning of the Act, in the answer.

Trial Examiner Kent: We need additional foun-

(Testimony of Daniel P. O'Keefe.)

dation for that. I don't think you can rely on a plain admission. You may proceed.

Mr. Nicoson: Will you please read the question to the witness?

(Question read.)

A. Manufacturing gas appliances and electric refrigerators, I think would cover it generally.

Q. (By Mr. Nicoson): And by gas appliances you would include stoves, gas stoves? A. Yes.

Q. Now, up to January 1st of 1946, did the kind of business that you were engaged in change in any manner?

Mr. Collins: I will stipulate that during the war they manufactured electric generators and they had the wiring [954] done by the Pioneer Electric Company, and that change happened to result in the war ending in our favor.

Q. (By Mr. Nicoson): Did they manufacture any stoves during that period?

Mr. Collins: During the war they did not manufacture any stoves, as far as I can recall, except maybe cleaning up a few of them.

Mr. Nicoson: Of course he is familiar with the business and you say you don't know. I think maybe it would be better if we had the testimony from the witness.

Trial Examiner Kent: It might be.

Mr. Nicoson: Will you please read the witness the question?

(Question read.)

The Witness: Until 1946?

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Nicoson): Until January 1st of this year. A. Yes, it did.

Q. In what manner did it change?

A. Well, we stopped manufacturing gas appliances in early 1942, I believe it was, and started making generating sets for the government, and other things for the government.

Q. Were any of these generators manufactured for the United States Government or any of its subdivisions? A. All of them.

Mr. Nicoson: Now, if we may go off the record. May we? [955]

Trial Examiner Kent: Yes, off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: It is stipulated by and between Mr. Collins and myself that during the year of 1945 O'Keefe and Merritt produced products in excess of \$2,000,000.00, at least 10 per cent of which were shipped out of the State of California.

Mr. Collins: I will so stipulate.

Q. (By Mr. Nicoson): I believe you testified, Mr. O'Keefe, that you did manufacture some generators for subdivisions of the United States Government; is that correct? A. Yes.

Q. And you had contracts for the production of those generators with the government; did you not? A. Yes.

Q. Have you brought those contracts with you, in response to the subpoena?

Mr. Collins: No, Mr. Nicoson, he doesn't have

(Testimony of Daniel P. O'Keefe.)

them with him. I thought that was covered by my offer to stipulate we were engaged in interstate commerce.

A copy of all the contracts and so on you referred to in your Appendix A in the subpoena duces tecum, if we complied with them, would literally require a truck and a couple of truck drivers. There are too many records. If you will tell me specifically what you want I will get it down here, in the [956] event you can't accept our stipulation. I see no jurisdictional question involved at all. I have admitted in the pleadings——

Mr. Nicoson: I am perfectly willing to take this gentleman's statement for it, without requiring you to bring all of the contracts in.

Mr. Collins: Very well.

Mr. Nicoson: But I was anticipating the usual objections, and I wanted to do it the right way.

Mr. Collins: Proceed.

Q. (By Mr. Nicoson): Your contract with respect to the generators was with the signal department of the Army; was it not?

A. We had contracts with the Signal Corps, the Navy, Engineers, and I believe the Air Corps.

Q. If you can approximate it, about what was the time you entered into the first one of those contracts? Was that about August, 1948?

A. I can't remember, really. I think it was earlier than that. I think it was in the latter part of '41. I am not sure about that.

Q. Well, I think you will recall that Pearl

(Testimony of Daniel P. O'Keefe.)

Harbor came on December 7, 1941. War was declared a few days later. Was it before the end of the year you got the contracts?

A. I think so. [957]

Q. With respect to the generators, that you say you had the contract for, did you have a contract for the manufacture of electrical staters? Do you recall anything like that?

Mr. Garrett: May I have the question read?

(The question was read.)

The Witness: The staters are part of the generators. If there were some staters in the contract—I don't remember—they would be in there as spare parts.

In nearly every contract there was some spare parts for a certain percentage of the generator order, and that would include some staters, I presume.

Q. (By Mr. Nicoson): Would it be a fair statement to say this contract or these contracts were generally broken down to stater winding and assembly of the generators and its parts? Would that be fair to state that? A. No.

Mr. Garrett: Objected to as leading.

Mr. Nicoson: He said no, it wouldn't be fair.

The Witness: No. The contracts were for generators, and additional spare parts, for parts that might wear out. Not part of the particular generators on the order, but something as a replacement. When they would be shipped overseas if something wore out they would have a spare part.

(Testimony of Daniel P. O'Keefe.)

Q. Now, assuming, as your best recollection is, you [958] received those contracts the first time before the end of the year 1941—let's take it to the year 1942—did the O'Keefe and Merritt Corporation perform all of the work in the execution of those contracts?

Mr. Garrett: Same objection.

Trial Examiner Kent: The objection may be overruled, with the understanding your objection does go to this line.

The Witness: No, we never did all the work on those generators.

Q. (By Mr. Nicoson): But is it true that O'Keefe and Merritt did some of the work on those contracts? A. Yes.

Q. And if O'Keefe and Merritt didn't do all the work on the contracts, what concerns or people did the balance of the work?

A. I can't recall. It was probably ten sub-contractors on those. I wouldn't remember their names offhand. [959 & 960]

Q. If I suggest to you the name of Pioneer Electric Company, does that—

A. That was one of them.

Q. —refresh your recollection?

A. Yes, that was one of them.

Q. Can you name any of the others?

A. Vardeo Manufacturing did some work. Lyon—I think it was Lyon Electric; I am not sure of that, either. It is Lyon something. They were electrical. A lot of others; Ace Foundry and

(Testimony of Daniel P. O'Keefe.)

Whiting-Mead. I know there were a lot of them; I can't remember them.

Q. Are you familiar with the term "prime contractor"? A. Yes.

Q. Do you know whether or not O'Keefe and Merritt was the prime contractor in these contracts with the government or not? A. Yes.

Mr. Garrett: One moment, please. Please wait until I object.

The Witness: I just said yes, I know.

Trial Examiner Kent: The objection is overruled. He may answer.

Mr. Nicoson: The answer is in, and he said yes.

Q. (By Mr. Nicoson): In the performance of those contracts, was the O'Keefe and Merritt a prime contractor? Did I ask you that? [961]

A. Yes.

Q. Then as to the performance of those contracts, the O'Keefe and Merritt did part of the work and part of it was done by other people; is that correct? That is, other people or other concerns.

A. That is right.

Q. Is this about the way it worked: The other people besides O'Keefe and Merritt made, manufactured or processed certain parts which, in turn, they brought back to O'Keefe and Merritt and O'Keefe and Merritt assembled them into the final product and thereafter it was delivered to the government; is that about the way it happened?

A. Yes.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: I understand I have a continuing objection?

Trial Examiner Kent: Yes, it will go to the line.

The Witness: Yes.

Q. (By Mr. Nicoson): I think you said part of that work was done by the Pioneer Electric Company. A. Yes.

Q. If you know, when did the Pioneer Electric Company come into existence?

A. No, I don't know.

Q. After the first of September, 1942, up to and including V-J Day, which as I now recall, was August 14, 1945, do you [962] know where the Pioneer Electric Company was located?

A. I know where they were located. I am not sure of the dates there. I know where they were located.

Q. Well, within the scope of your knowledge, will you state for the record where they were located at that time?

A. I would have to say on Los Palos Street, but I don't know the number. I mean if you wanted the address of their office——

Q. Just to be brief, it was within this building that you have described as 3700 Olympic Boulevard; isn't that right?

A. Yes. It is the one building that covers——

Q. More particularly, it was in the northeast corner of that building; isn't that right?

A. Well, they didn't have the corner, but they were in the side of the building facing Los Palos.

(Testimony of Daniel P. O'Keefe.)

Q. Now, I am not trying to be facetious about this, Mr. O'Keefe, but have you been around on that door on Los Palos side of the building?

A. Yes.

Q. Have you noticed whether or not there is a number up there, as a street number? A. No.

Q. Do you happen to know between Olympic Street and what you said is Union Pacific, on Los Palos side, what hundred block that is in? [963]

A. What?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: No.

Mr. Garrett: It is now 3:30, I notice. May we have the afternoon recess?

Trial Examiner Kent: Yes, we might have a 5-minute recess.

(A short recess was taken.)

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 13, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, I hand you a document consisting of two pages in a legal back, and ask you to examine and state if you know what it is.

A. Yes. That is the lease that we gave to Pioneer Electric Company.

Q. By the O'Keefe and Merritt Company?

A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. That is the first lease that you had with the Pioneer Electric Company, is that correct?

A. Yes.

Q. And the date on that shows November 16, the 16th day of November, 1942, is that correct?

A. Yes. [964]

Q. Directing your attention to the second of the typed pages, I will ask you if that is your signature on there under the name O'Keefe and Merritt, Lessor?

A. Yes.

Q. Now, also directing your attention to the words Pioneer Electric Company, lessee, by—and there is a blank space, do you know whether or not the Pioneer Electric Company signed by any particular person, of your own knowledge?

A. No, I wouldn't remember. I presume we have a copy, our copy of the lease signed by someone of the Pioneer Electric in the office and can produce it if necessary.

Mr. Nicoson: I show this to the parties and offer it in the record as Board's Exhibit 13.

Mr. Garrett: That is all right.

Mr. Collins: No objection.

Mr. Garrett: Is that from O'Keefe and Merritt to Pioneer Electric?

Mr. Nicoson: That is right, dated November 16, 1942.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 13, for identification, was received in evidence.)

(Testimony of Daniel P. O'Keefe.)

BOARD'S EXHIBIT No. 13

LEASE

This Indenture, made this 16th day of November, 1942, between O'Keefe & Merritt Co., a corporation, as lessor, and Pioneer Electric Co., a co-partnership, as lessee.

Witnesseth, that the said lessor does by these presents lease and demise unto the said lessee, and the said lessee does hereby hire and take from the said lessor, certain premises located in Los Angeles County, State of California, described as follows, to-wit: 11,740 square feet of floor space, now enclosed, (excluding space occupied by the continuous enameling oven) and known as 1221 Los Palos, Los Angeles, California, with the appurtenances, for the term of one year from the 16th day of November, 1942, at the rent or sum of Five Hundred (\$500.00) Dollars, payable in advance on the tenth day of each and every month during said term.

And It Is Hereby Agreed, that if any rent shall be due and unpaid, or if default shall be made, in any of the covenants herein contained, or breach thereof, then it shall be lawful for the said lessor to re-enter the said premises and to remove all persons and goods therefrom; and the said lessee does hereby covenant, promise and agree to pay the said lessor the said rent in the manner hereinbefore specified, and not to let or underlet the whole or any part of the said premises without the written consent of the said lessor, nor to assign the lease

(Testimony of Daniel P. O'Keefe.)

or any part thereof without said written consent; nor shall the interest of the lessee be transferred by operation of law through any execution sale or bankruptcy proceeding; and, at the expiration of the said term, the said lessee will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit.

The lessor shall have the right, at any time upon entering into a contract for the sale of the premises, to cancel this lease, and the term hereby granted, upon giving the lessee thirty (30) days' notice of its intention so to do, and upon the expiration of said thirty days, the lessee agrees to vacate the premises and to surrender this lease and the term hereby granted.

Lessee agrees to maintain adequate fire protection and to so conduct its business so as not to become a hazard to the O'Keefe & Merritt Co. property immediately adjacent thereto.

In Witness Whereof, the parties to these presents have hereunto set their hands the day and year first above written.

O'KEEFE & MERRITT CO.,

Lessor

By D. O'KEEFE

PIONEER ELECTRIC CO.,

Lessee

By

[Endorsed]: Filed March 20, 1946.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 14, for identification.)

Mr. Nicoson: I at this time, as Board's Exhibit 14, offer a certified photostatic copy of the certificate of business, fictitious firm name filed October 15, 1942 with J. F. Maroney, County Clerk, also photostatic copy of the affidavit of publication of the operation under a fictitious name filed with J. F. Maroney, County Clerk, and on November 6, 1942, a photostatic copy of business, fictitious firm name, filed with J. F. Maroney, County Clerk, January 28, 1944, also an affidavit of publication with respect to that filing, and also filed with J. F. Maroney, County Clerk, February 25, 1944; further certificate of business, fictitious firm name, filed November 28, with Mr. J. F. Maroney, County Clerk, and also the affidavit of publication of operating under a fictitious firm name filed with J. F. Maroney, County Clerk, December 29, 1945, all with respect to the Pioneer Electric Company, together with the certification of J. F. Maroney, County Clerk, as being photostatic copies of documents legally on file under his care.

Mr. Garrett: Is that all Board's 14?

Mr. Nicoson: That is all 14, yes.

Mr. Garrett: No objection.

Mr. Collins: No objection.

Trial Examiner Kent: It may be admitted.

(The documents referred to were marked as

(Testimony of Daniel P. O'Keefe.)

Board's Exhibit No. 14, heretofore for identification, was received in evidence.)

[Board's Exhibit No. 14 set forth on pages 1716 to 1703] [966]

Mr. Nicoson: We have a stipulation, if your Honor please.

It is stipulated by and between the parties to these proceedings that Robert J. Merritt and Willis J. Boyle, both of whose names appear and who affixed their signatures to the Certificate of Business Fictitious Firm Name are the same Robert J. Merritt and Willis J. Boyle this witness has previously identified as being corporate officers of the O'Keefe and Merritt Corporation.

Mr. Collins: I will so stipulate.

Mr. Garrett: So stipulated. Mr. Reed is not in the room. He says I may so stipulate for him, also.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Nicoson): Mr. O'Keefe, I hand you Board's Exhibit 14 and direct your attention to the copy of the Certificate of Business Fictitious Firm Name, which was filed October 15, 1942, and direct your attention to the name Lewis M. Boyle, and I will ask you to state if you know who he is.

A. Yes, he is a brother of W. J. Boyle.

Q. W. J. Boyle is the Willis J. Boyle who has also signed that document? A. Yes.

Q. Thank you. Mr. O'Keefe, during the war years and up to V-J Day, with respect to that lease that we have put in as Board's Exhibit 13, and

(Testimony of Daniel P. O'Keefe.)

particularly with respect to the [967] footage occupied by the Pioneer at that time, was there any barrier, physical barrier that separated Pioneer from the O'Keefe and Merritt portion?

A. Yes.

Q. What kind of a barrier? A. A wall.

Q. Was it ceiling height?

A. I don't know how high ceiling height is. But I don't remember how high the wall was, either.

Q. Is it your testimony you don't recall whether it ran all the way to the ceiling or just part of the way? That is what I am trying to find out.

A. I don't remember whether it went all the way to the ceiling or not. It might have some places and might not in others; I am not sure.

Q. Did that barrier or wall completely separate Pioneer from the portion occupied by O'Keefe and Merritt?

A. When you say "completely" now—we had doors. There were doors, I think, two doors going in and out.

Q. What I am driving at, was it completely walled in and separated in that manner from the O'Keefe and Merritt, forgetting for the moment you did have doors going in there? A. Yes.

Q. As you testified, there were doors to go in and come out of the Pioneer portion? [968]

A. Yes.

Q. Now, you had a tool crib there at one time surrounded by some chicken wire or something;

(Testimony of Daniel P. O'Keefe.)

isn't that right? That is, before Pioneer came in there, is that correct, as you recall?

A. No, I don't think so.

Q. You don't remember that?

A. I don't think it was there.

Q. From the time Pioneer occupied that space up to and including V-J Day, do you know from what door the Pioneer received its incoming materials and freight?

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

Q. (By Mr. Nicoson): Do you understand the question? A. Yes.

Trial Examiner Kent: The answer may be taken.

Mr. Nicoson: Your answer is you don't know?

Mr. Garrett: May I have a continuing objection?

Mr. Nicoson: Well, he is not answering. He is shaking his head.

Mr. Garrett: These chicken coops and tool cribs and so forth, I don't want to interpose the objection all the time it is immaterial, which takes time. May I have a continuing objection?

Trial Examiner Kent: Yes, a continuing objection to the [969] whole line.

Mr. Garrett: As immaterial.

Q. (By Mr. Nicoson): Do you know whether or not during the period of Pioneer's existence, or rather, during the time they occupied that space in your plant pursuant to this lease which is in evidence, whether or not it had any employees?

(Testimony of Daniel P. O'Keefe.)

A. Whether or not the Pioneer had any employees?

Q. The Pioneer had. A. Yes.

Q. Do you know how they went to and from work in that portion? A. Yes.

Q. How did they do that?

A. To and from, you mean the door they went in or means of conveyance or the door they went in?

Q. Yes.

A. I am not sure. I think they all came in on Los Palos Street. I don't know what number there. There are two doors there on Los Palos. Whether they all came in one or whether they used both doors, I am not sure. I think they used just one door there where they had their time clock.

Q. Was that time clock on the Los Palos side, do you recall?

A. Well, I say where they had the time clock. I think I [970] recall seeing a time clock there. I am not sure. I wouldn't say for sure.

Q. Isn't this a fact, Mr. O'Keefe, I am not trying to argue with you, that during the war period all employees came into the O'Keefe and Merritt employees' entrance because that is where you had the guards located, both Pioneer and O'Keefe and Merritt? A. Oh, no.

Q. They came in on Los Palos?

A. Yes. There may have been two or three came in our way, but I don't think so. I don't think any of them came in our way. They had to

(Testimony of Daniel P. O'Keefe.)

have an O'Keefe and Merritt badge to get in our way.

Q. I will ask you if you know a person by the name of Ben Platz. A. Yes.

Q. Prior to the origination of Pioneer, do you know what position, or rather, do you know by whom Ben Platz was employed?

Mr. Collins: Just a moment. May we have a little more foundation laid. I would like to know how far prior to the formation of Pioneer.

Mr. Nicoson: Well, immediately prior to the formation of Pioneer.

Mr. Garrett: How do you spell his name? [971]

Mr. Nicoson: P-l-a-t-z. That is the way I have it here. Or it may be P-l-a-a-t-z. Might be correct.

The Witness: I didn't know there was a "z" on his name, but then maybe there is. I didn't know how to spell it. He used to work for us, at one time, if this answers your question. He quit and went with some public accountant and whether he came back to work for us a while or not, I don't remember, or whether he went directly from the public accountant's office to the Pioneer, or whether he worked a while for us in the meantime, I am not sure. I don't think he did. I think they got him back from the public accountant.

Q. (By Mr. Nicoson): Do you know a person by the name of Leo Munchoff, I think it is spelled M-u-n-c-h-o-f-f? A. Yes.

Q. Immediately prior to the existence of Pioneer

(Testimony of Daniel P. O'Keefe.)

Electric Company, was he employed by O'Keefe and Merritt?

A. I don't think so. He was years ago, but I don't think——

Q. Do you know a person by the name of Joseph Spallino? A. Yes.

Q. Immediately prior to the existence of the Pioneer Electric Company, was he employed by O'Keefe and Merritt? A. Yes.

Q. In what capacity was he employed?

A. I don't remember whether—there were so many things happened since then. He was either a foreman or a [972] general foreman or assistant superintendent, I don't know which.

Q. Isn't it a fact that he was assistant to Bill O'Keefe who at that time was the plant superintendent?

A. I would not be surprised. I am not sure now. No, I think not. I think Mark Smith was assistant at that time. He was a foreman, I guess.

Q. Do you recall what department he was foreman of?

A. No, I don't. He was at one time in the plating department. I guess probably—that is where he was, in the polishing and plating department.

Q. And after Pioneer came into existence, Joe Spallino went to work for them, isn't that correct?

A. That is right.

Q. Do you know what capacity he functioned in for the Pioneer?

(Testimony of Daniel P. O'Keefe.)

A. I think he was called superintendent. Whether he—I think that was his title.

Q. Do you know a person by the name of William Durant? A. Yes.

Q. Immediately prior to the existence of Pioneer Electric Company, was Mr. Durant employed by O'Keefe and Merritt Company? A. Yes.

Q. And in what capacity? [973]

A. Chief engineer.

Q. After the Pioneer Electric Company came into existence, did he go to work for Pioneer?

A. No.

Q. He stayed on the O'Keefe and Merritt payroll? A. Yes.

Q. As a matter of fact, he was your contact man with the U. S. Signal Corps; wasn't he?

A. Well, I don't know—no, you wouldn't call him the contact man. He was our chief engineer with the Signal Corps. We had a contact man.

Q. He did do business for O'Keefe and Merritt with the Signal Corps; isn't that right?

A. Yes.

Q. Now, I will ask you, if you know, when the Pioneer Electric Company came into existence, whether or not any of the employees of O'Keefe and Merritt, other than those I have just asked you about, went to work for Pioneer Electric?

Mr. Garrett: May I call your Honor's attention to the fact we are now past 4:00 o'clock. May we recess at this time?

Mr. Nicoson: We have had one recess.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: We just recessed a few minutes ago. Did you want to make a phone call or something?

Mr. Garrett: No, your Honor. How long are we going to [974] go this afternoon?

Trial Examiner Kent: Until 5:00. We have had a rather short day. We were late in getting started.

Mr. Garrett: Is seems long to me.

The Witness: Some employees that worked for us went over with Pioneer?

Q. (By Mr. Nicoson): Yes. A. Yes.

Q. Do you have any way of knowing how many went over there?

A. No, I have no way of knowing. I could have it looked up.

Q. I see. You have no present recollection of the number of employees? A. No.

Q. Could you make an approximation of the number? A. No.

Q. Now, you have before you Board's Exhibit 13 which, I believe, you described as a lease between O'Keefe and Merritt and the Pioneer Electric Company. I will ask you after the Pioneer *became* into existence, up to and including V-J Day, if you had any other written contracts with the Pioneer Electric Company? I mean by that the O'Keefe and Merritt people, if you recall.

A. I think we did, yes.

Q. May I ask you, Mr. O'Keefe,—I don't think we will be [975] able to get rid of you today—

(Testimony of Daniel P. O'Keefe.)

when you come back in the morning, if you have had an opportunity tonight to search your files and see if there is such a contract in writing, if there is, will you please bring it in in the morning?

A. Yes.

Q. Thank you, sir. Do you know a person by the name of L. J. Mitchell? A. Yes.

Q. Immediately prior to the Pioneer Electric Company came into existence, was Mr. Mitchell employed by the O'Keefe and Merritt Company?

A. Yes.

Q. After Pioneer came into existence, he went to work for them; is that correct? A. No.

Q. Do you know whether or not he ever went to work for Pioneer Electric Company?

A. Never did.

Q. At least, I want to call your attention to this, so that the record will show that I am not trying to trap you. On this certificate of Business Fictitious Firm Name, being the third one, the name of L. J. Mitchell appears? A. Yes.

Q. Is that the same L. J. Mitchell we are talking about? A. Yes. [976]

Q. He is still employed by O'Keefe and Merritt? A. Yes.

Q. Now, on or about August 17, 1945, the U. S. Signal Corps terminated its contract with O'Keefe and Merritt; isn't that right? A. Yes.

Q. I think at that time you had with the Signal Corps, at least you had four contracts outstanding; is that right? A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. You don't remember? A. No.

Q. All right. I will ask you after August 17th, if you know, whether this wall around the Pioneer Electric Company was removed.

A. I don't know just when it was removed. It is not there now.

Q. I see. Then it is your testimony you can't tell how soon after August 17th, if that is the date, it was taken down, but it isn't there now?

A. That is right.

Q. With respect to Joseph Spallino, after August 17th did he ever again become an employee of the O'Keefe and Merritt Company?

A. Yes.

Q. Could you give us about the time he became an employee [977] of the O'Keefe and Merritt Company? A. No.

Q. It was sometime after August 17th?

A. Between that and the first of the year, I would say, but I don't know just when.

Q. In what capacity was he employed?

A. Superintendent.

Q. Superintendent. Did he replace Mr. W. J. O'Keefe? A. Yes.

Q. Mr. W. J. O'Keefe, did he remain in the service and employ of the O'Keefe and Merritt Company? A. Yes.

Q. What capacity did he thereafter occupy?

A. He was, I would say, in the sales end.

Q. Sales? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. Did he have a title?

A. No, I guess not.

Q. After the Pioneer came into existence and up to V-J Day, did the Pioneer, so far as you know, have any machinery within that enclosure?

A. Yes.

Q. And after the contract termination date, do you know what happened to that machinery?

A. No. [978]

Q. If I suggest to you it was moved out of that portion and part of it into the parking lot across the street from Calzona, would that refresh your recollection about it any?

A. I would imagine——

Mr. Garrett: Just a minute. That is objected to as leading. If he suggests, as he starts the question, his question is leading and suggestive.

Mr. Nicoson: At least I didn't try to conceal it.

Mr. Garrett: No, you were frank about it. It is leading and it has a label on it.

Mr. Nicoson: I asked if that would refresh his recollection.

Mr. Tyre: I think that is proper, your Honor. He has already asked him whether he remembers. He says he doesn't. Now, I think you are entitled, in order to refresh his recollection, to ask him a leading question. [979]

Trial Examiner Kent: I wonder what the materiality is.

Mr. Tyre: Just a minute, your Honor. I am

(Testimony of Daniel P. O'Keefe.)

going to request that Mr. Garrett withdraw the silly remark that he just made.

Mr. Garrett: I don't know why you should be concerned about that, Mr. Tyre.

Mr. Tyre: It is a ridiculous statement to make.

Mr. Nicoson: Since I didn't hear it, I am completely in the dark.

Trial Examiner Kent: I didn't hear it either, and I think the reporter said she didn't hear it.

Mr. Collins: I will object to the question upon the ground it is immaterial, as to whether Pioneer moved their machinery or moved to Calzona Street or some other property. I don't see the materiality of that.

Trial Examiner Kent: He may answer if he knows.

The Witness: Well I don't know. I suppose they sold some of it, and maybe they moved some of it across the street. I don't know. I haven't the slightest idea, so I can't answer.

Q. (By Mr. Nicoson): Do you know, Mr. O'Keefe, who the owner of that machinery was that was in the Pioneer Electric Company space?

A. Well, I assume that it was, that it belonged to the [980] Pioneer Electric Company. They might have borrowed a tool or two from us, of unimportant small consequence, but I would presume that the rest of it they owned.

Q. Isn't it a fact, sir, that in about October of 1945 you purchased all or a part of that machinery from the United States Signal Corps?

(Testimony of Daniel P. O'Keefe.)

A. I didn't know the United States Signal Corps owned it or that we bought it. I didn't even know they owned it. I presumed it belonged to the Pioneer Electric.

Q. Is it then your testimony that you know nothing about whether or not that machinery was purchased by the O'Keefe and Merritt Corporation?

Mr. Garrett: Objected to as already asked and answered.

Trial Examiner Kent: What was that question?
(Question read.)

Trial Examiner Kent: No, it was the remark of Mr. Garrett. I think he made an objection.

Mr. Garrett: Objected to as already asked and answered and argumentative.

Trial Examiner Kent: The objection will be overruled. He may answer.

The Witness: No, I don't know.

Q. (By Mr. Nicoson): I will ask you, Mr. O'Keefe, if on or about October '31, 1945 the Los Angeles Times carried an advertisement of the sale of surplus property. Did that [981] come to your attention, if it was a fact?

A. I didn't know about it.

Q. I also ask you if you know whether or not thereafter O'Keefe and Merritt put in a bid in the sum of \$80 for this surplus property.

A. I don't know.

Q. And I will ask you thereafter if the U. S. Signal Corps did not advise you that the bid was unsatisfactory.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: This is all leading. It is all cross examination. Maybe Mr. Nicoson has got some information which permits him to cross-examine; maybe he is surprised; maybe he is just trying to degrade this witness and argue with the witness who is his own witness.

Mr. Nicoson: I object to any such thing, degrading the witness. I think that is silly, Mr. Garrett.

Mr. Garrett: You are asking your own witness questions which would tend to impeach his integrity, aren't you?

Mr. Nicoson: I am trying to establish a fact.

Mr. Garrett: He says he didn't do something, then you say——

Mr. Nicoson: No, he didn't say he didn't do anything, he said he didn't know about it.

Mr. Garrett: I appeal to the Court to rule that the examination should be as on direct, not argumentative, not leading, not contentious, by any of us when we produce our [982] own witnesses unless we make a showing of surprise.

Mr. Collins: Mr. Nicoson, why don't you ask the witness who would know in his organization? He has a purchasing agent who would very likely know about this.

Trial Examiner Kent: I will sustain the last objection.

Q. (By Mr. Nicoson): Well if anything like this did occur with the O'Keefe and Merritt Company do you know who within your organization would know that?

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: Just a moment. That is leading and suggestive. I object to it on that ground.

Trial Examiner Kent: No, I can't see that is objectionable. I will overrule the objection. He may answer.

A. Well, there might be several people that would handle it, might take it up with Mr. Merritt or handle it without taking it up with him. They have authority to handle that kind of a transaction without taking it up with Mr. Merritt, and they never take it up—I mean I would say that they would not take it up with me anyhow. I wouldn't know about it.

Q. (By Mr. Nicoson): It would not normally come to your attention?

A. No. It might come to Mr. Merritt's attention and it might be handled without calling it to his attention.

Q. Do you know, Mr. O'Keefe, at V-J Day or rather on August 17th or thereabouts whether there was any unfinished [983] work in the Pioneer Electric portion of the building down there?

A. Do I know was there any unfinished?

Q. Unfinished work on generators or whatever the Pioneer was doing then at the termination of the contract.

A. Well, I couldn't say I know from my own knowledge of seeing it, but I am sure there was.

Q. Do you know what became of the work, the parts and the work that was left there, if there was any?

(Testimony of Daniel P. O'Keefe.)

A. Well, I think a great deal of it is either in this lot that you talked about across from Calzona or has been disposed of probably.

Mr. Nicoson: Do you have those speeches?

Mr. Collins: Yes. Here they are.

Mr. Garrett: There are three speeches, each one of which contains a matter of six pages, three of them about that length, one of them three. I wonder whether we could not produce those for the Board's attorney and recess until in the morning so they could be finally disposed of by him and he could base his cross-examination thereon. Obviously we are getting into——

Mr. Collins: I have offered to stipulate that those speeches were made by Mr. O'Keefe. There may have been a few variations from the script.

Mr. Garrett: Then too I should like to have copies [984] of those speeches, and I think possibly they can be obtained from the company if we put them in and then withdraw them for the purpose of making copies.

Trial Examiner Kent: If they are admitted, yes, you may have the privilege of withdrawing them.

Mr. Garrett: They have considerable bearing, I understand, in relation to this case. We all want to study them over carefully before they are admitted. I would not be in a position to object until I have read them thoroughly and studied the problem.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I think I rather like the suggestion to recess, to be given an opportunity to look these over, because as Mr. Garrett has said they are voluminous and they are something I would like to have the opportunity to go over carefully. If it is agreeable to counsel for the company, I would be agreeable to taking a recess at this time for the purpose of going over them, because it will take me some time to read them.

Trial Examiner Kent: Very well. We will recess until 9:30 in the morning then.

(Whereupon, at 4:20 o'clock p.m., March 20, 1946, the hearing in the above-entitled matter was adjourned until 9:30 o'clock a.m., March 21, 1946.) [985]

Thursday, March 21, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: I note all counsel are not here yet. It is approximately a quarter of 10:00 Counsel for the Board and counsel for the respondent, Mr. Collins, are here, and I think we better proceed.

Mr. Tyre: The record may as well show counsel for the C.I.O. is also here.

Trial Examiner Kent: Pardon me, Mr. Tyre. The record may so show.

Good morning, Mr. Garrett. I just made a statement on the record that we would proceed with the counsel present. But so far nothing has taken place.

(Testimony of Daniel P. O'Keefe.)

Mr. Garrett: I think I requested before, Mr. Trial Examiner, that any time I am not here at the opening hour I wish your Honor would proceed without me. I have made it perfectly clear, I think, on the record, that it is impossible for me to appear for the hours that your Honor has insisted on.

Trial Examiner Kent: Very well. I am glad to have that statement on the record.

Mr. Nicoson: Mr. O'Keefe.

DANIEL P. O'KEEFE,

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified as follows: [990]

Direct Examination

(Continued)

Q. (By Mr. Nicoson): Mr. O'Keefe, I show you a document which is in evidence as Board's Exhibit 13, being the lease between the O'Keefe and Merritt and Pioneer Electric Company on the 16th of November, 1942. I called your attention yesterday to the fact under the place for the Pioneer there appears to be no signature.

Mr. Collins has handed me another copy of that document. I will ask you to examine it and state whether or not there is a signature on that for the Pioneer Electric Company, lessee. A. Yes.

Q. That is the signature of W. J. Boyle; is it not? A. Yes, sir.

Q. Are you acquainted with Mr. Boyle's signature? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. And that is his (indicating)? A. Yes.

Mr. Nicoson: May we have a stipulation that the exhibit now in evidence be amended accordingly?

Mr. Collins: I will accept that stipulation.

Mr. Nicoson: Did you hear that, Arthur?

Mr. Garrett: I will stipulate.

Trial Examiner Kent: The record may so show. It might be in order, I do not think it would be objectionable to [991] physically write the signature non pro tunc in the exhibit as admitted.

Mr. Nicoson: I think the exhibit should be amended so as to show that confirmation, yes.

Trial Examiner Kent: Very well.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 15, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, about the time of the National Labor Relations Board election, which we have stipulated here occurred on November 20th, you made some speeches or talks to the employees, did you not? A. Yes.

Q. I hand you a document composed of five sheets which, for the purpose of identification has been marked Board's Exhibit 15, and ask you to state whether or not that is the transcript of one of the talks that you made. A. Yes.

Q. It has also been stipulated here that the first of these talks occurred on November 19th, the second occurred a week later, and the third occurred about February 1st. That, of course, is a stipulation of counsel and I am bound by it, but if you do

(Testimony of Daniel P. O'Keefe.)

not think that is correct, you have a right to straighten us out about it.

A. I don't remember any of the dates. [992]

Q. And so according to our stipulation this is the speech that you made on November 19th, which is the day directly preceding the election. Does that agree with your recollection?

A. Yes. It was before the election. I don't know whether it was the day before or what.

Mr. Tyre: Pardon me. May I have that answer read back?

(The answer was read.)

Mr. Nicoson: I am not trying to alter the stipulation. I am just trying to find out if we were right.

Q. (By Mr. Nicoson): Did you make any departures from this speech that you now recall or this talk?

A. Well, I wouldn't say. It all depends on what you mean by departure. I would not be looking at this, I mean. I would not read this the same as if somebody else had written it for me. I wrote this just to go by, and I would read for a part of the time and then I would be looking at the audience or the employees part of the time, and the phraseology might be somewhat different.

Q. Does this represent substantially what you said at that time? A. Yes, I would say so.

Mr. Nicoson: I offer it in the record as Board's Exhibit 15.

Mr. Collins: No objection.

Trial Examiner Kent: It may be admitted.

(Testimony of Daniel P. O'Keefe.)

The document heretofore marked as Board's Exhibit No. 15, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 15

I realize that selecting a union to bargain for you is your own affair and for this reason, I have not interfered with the activities of the different groups who have been active in organizing for the different unions. However, some of the old timers around here asked me to express my views, inasmuch as they thought I had an opportunity to evaluate the different unions and pass this information along to the men. I suppose that some of you will feel that I am butting in but, after all, I am expressing my opinion and when it comes to voting, the ballot is secret—you can suit yourselves.

First of all, I can say that I still think all unions are bad—the A. F. of L. as evidenced by the trouble they caused in the moving picture strike—the C.I.O. for the many disturbances they have created in the short period of time they have been in existence, and while there are probably some good men connected with both unions, nevertheless I think a lot of them want to make a living without doing any work themselves. But that is not the issue now. The question for you to decide is which of the two, let's say evils, is the lesser or will there be more benefits from one than from the other.

From my point of view, the C.I.O. boys are making a lot of promises that they know cannot be ful-

(Testimony of Daniel P. O'Keefe.)

filled, figuring that once they are in, then there is nothing anybody can do about it. For instance, they ask you to vote C.I.O. for \$1.65 per hour minimum for machinists, \$1.95 per hour minimum for tool and die makers, \$1.55 per hour minimum for welders and \$2.00 per hour guarantee for molders and core makers. Now the C.I.O. have been the union representing the U. S. Steel Corporation, Boyle Manufacturing Division, for several years. The rates called for in their contract and paid by the Boyle Mfg. Company are—tool room machinists, Grade A, 1.30½, Grade B, \$1.15½, Grade C, \$1.00½—tool and die makers, Grade A, 1.40½—Arc welders, required to read blue prints and do their own lay out work, Grade A, \$1.20½, Grade B, 1.05½. Inasmuch as I don't know of any grey iron foundries that are operating under a C.I.O. contract, I didn't get a rate on molders. I think most of the grey iron foundries in Los Angeles are operating under an A. F. of L. contract. Now, as you will see, there is a big discrepancy between what the C.I.O. are getting for the men they represent and what they would lead you to believe they will get for you.

In addition to this, the C.I.O. would lead you to believe that they would ask for and get four week's Christmas bonus for 5 & Over members and two week's for one year and over, but they have been representing the men at Boyle for a long time and I understand they don't get them any bonus. Now the C.I.O. have made a lot to do about this Christmas bonus, saying you earn it and it should be part

(Testimony of Daniel P. O'Keefe.)

of the contract and so on. The truth of the matter is, it has nothing at all to do with wages. We have endeavored to pay the going rate of wages in this community for whatever your job classification is—then if we found we had a good year, we wanted to give you something as a Christmas present out of the profits. However, if we have a poor year, we don't expect to down in our pockets and make you a Christmas present which amounts to about \$20,000.00. I am sure that you have never complained about the size of the Christmas bonus—I am sure you are not the kind of people who would accept a present and then say it wasn't enough. However, these people who want to represent you tell you they are going to do that very thing. I do not think you would appreciate that kind of representation. I understand the 5 & Over Club are going to give me a turkey for Thanksgiving. I will accept it as a gift and surely appreciate it, but if I am not here and somebody representing me accepts that turkey instead of saying "Thanks" tells the 5 & Over Club that they have been doing this for several years, and, by gosh, this year it should have been two turkeys, I will surely see that he does not represent me again.

The C.I.O. states that they have been informed that we made 50 and 100 percent profit on our capital investment during the war and have a back log of orders equaling many millions of dollars. I do not think anyone working in our office gave them such information. As far as the profit is concerned,

(Testimony of Daniel P. O'Keefe.)

I think I only have to say this statement is ridiculous. However, we did make money during the war and I think you in the plant did fairly well too. The only people who suffered were the white collar workers or what might be termed office help, who did not do so well. But the difference between you and the company is that whatever you made you got in cash—whatever the company made, it invested in new and up-to-date machinery with the thought in mind that a lot of firms are going into the manufacture of appliances, firms such as the Consolidated Air Craft, Vultee, etc., and we knew unless we had the up-to-date equipment for very operation, we would not be able to hold our place in the industry, which of course would mean less work, and unless the firm makes money, it cannot pay good wages. We also invested in new lavatories for your comfort, fixing up new cafeteria and locker rooms, new 5 & Over Club and other things that you see and know takes money. In other words, there are no outside stock holders in the O'Keefe & Merritt Company, nobody howling for dividends; therefore, what we made we put back in to make this a better place for us all to work.

Now in one of the pamphlets passed out here, the C.I.O. state the No Strike Pledge of the United Steel Workers of America C.I.O. was kept inviolate during the entire war period. In this connection, I would like to read you just a little piece out of last Thursday's Herald. * * * Now, I don't know how many hours time was lost with each work stop-

(Testimony of Daniel P. O'Keefe.)

page—in some cases we know it was considerable. However, just to bring out my point, I would like to assume that the average loss was two hours each time. I think you would agree that this would be about a minimum average. 773 times two hours is 1546 hours in four years. Now if the wages were \$1.00 an hour, this amounts to \$1,546.00. I don't think that anyone would appreciate having \$1,546.00 taken out of his pay over a period of four years, but the thought I wanted to give you was that these boys from the C.I.O. make some pretty loose statements.

I understand the A.F.of L. had several meetings which were attended by some of you and I have been informed that they promised to get you the going rate in this industry for whatever job you were doing and while this probably did not sound as enticing as the big promises made by C.I.O., nevertheless it shows that they were honest and playing the game fair with you. As you know, the A. F. of L. tried to organize us a long time ago. We opposed it then on the grounds that they did more harm than good. I am not sure today whether or not that is still true, for the reason that I do not know how much trouble they will cause us. However, if they allow you to have your own local and you select the right men to head that local, I believe you can keep some of those who might be inclined to cause trouble from rocking the boat and get along harmoniously without work stoppages, which are a bugbear as well as a loss to management and em-

(Testimony of Daniel P. O'Keefe.)

ployees. From the management's standpoint, we know that in order to keep our place in the industry, it is necessary for us to run larger quantities of the different numbers than we did before the war. Therefore it is necessary for us to do more business in the northern part of the state, and as you probably know, we never were able to do much business in this territory, due to the fact that the men who connect the stoves belong to the A. F. of L. Union, the plumbers to whom we tried to sell water heaters all belonged to the A. F. of L., when we tried to sell floor furnaces, we ran against the building trades, who of course would not work on the job if the furnaces were installed by other than A. F. of L. men. Therefore it is reasonable for us to expect to do a lot more business if our merchandise is acceptable in the northern territory. That is just as true in this territory when it comes to water heaters and floor furnaces. We never were able to do much business with these items for the same reason.

Another reason that I would be partial to the A. F. of L., if I were an employee voting, is the fact that we are so closely identified with the building trades. If you are a carpenter and work here, you of course know that we are not going to need a lot of carpenters after the reconversion period; therefore, it would be necessary for you to drop the C.I.O. and join the carpenters' union before you could get a job in the building trades. As I understand it, practically all of the grey iron foundries that are

(Testimony of Daniel P. O'Keefe.)

union are affiliated with the A. F. of L. Now, if you are a molder belonging to the C.I.O. union, you would not have an opportunity to get work in a union shop if you found it necessary to make a change. Then too, wherever the stove industry is represented by a union, I believe it is always A. F. of L., that is such firms as James Graham making Wedgewood stoves, Western Stove Company making Western-Holly, and I believe Thermador, who make an electric range, are all affiliated with the A. F. of L. Therefore, if you are a stove moulder and left here, the chances are you would have to join an A. F. of L. union before you could go to work for another stove company. This is true whether you are a stove moulder, an enameler, press operator, shearman or whatever. It would therefore seem logical that if you are going to have a union represent you, you would have one that is familiar with the stove industry, because after all, that's what you want is as good a deal as the boys are getting in any other stove factory and I think that most of you will agree that we will try to give you a better deal than that given by others in the industry.

As far as piece work is concerned, I have had Mr. Collins take up with the different branches of the A. F. of L. and they assure us that if the employees wish, they can continue on a piece work basis with the union hourly rate guaranteed, which we think is the only fair way to work on production. If a man is capable and willing to do more work than some one else, he should get more pay.

(Testimony of Daniel P. O'Keefe.)

Now on the ballot there are three places to vote—one for the C.I.O., one for the A.F.of L. and one for neither. I can just imagine that there are a number of you who would be very glad to vote for neither, but I want to ask you as a favor to pass this up and vote for one or the other. The fact that you vote for one or the other does not mean that you will have to join that particular union or any union, but it does mean that you are going to have one or the other in here to bargain for you if you wish to join. And as you know, nobody is going to know how you vote—we will get along as best we can with whomever you select to represent you, as I believe you will always use good judgment in selecting your representatives. Therefore, again I urge you to be sure and vote.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 16, for identification.)

Mr. Garrett: Does that exhibit have any date on it?

Mr. Nicoson: Pardon?

Mr. Garrett: Does it bear any date, that transcript?

Mr. Nicoson: No. According to our stipulation, it should be on the 19th, and according to his recollection that was about correct.

Q. (By Mr. Nicoson): I hand you a second document consisting of six sheets, ask you to exam-

(Testimony of Daniel P. O'Keefe.)

ine it and state if that is not the transcript of the second speech that you gave at or about that time.

A. Yes, I think so.

Q. In like manner, does that represent substantially what you said at that particular time?

A. Yes, with the same exceptions, that I might have used different phraseology at times.

Q. That is right, but the substance is here?

A. That is right.

Mr. Nicoson: And this, Mr. Collins, is the speech that we stipulated took place about a week after the election is it not? [994]

Mr. Collins: Yes.

Mr. Nicoson: I now offer this for the record as Board's Exhibit 16.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 16, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 16

First of all, I want to apologize to the piece workers for asking you to take the time to attend this meeting. The firm will be very willing to pay for this time if you will take it up with your foreman.

Inasmuch as a lot of the 5 & Over members are in attendance, I would like to take this opportunity to thank you for the lovely turkey you set me for Thanksgiving. It sure was a dandy and the family and myself enjoyed it very much; in fact, we will

(Testimony of Daniel P. O'Keefe.)

enjoy it again several times before it is gone—it was a wonderful big bird.

There have been so many rumors circulated since the election last Tuesday, I thought maybe you would like to get some of the facts. First of all, let me say we have no fight with the CIO—their business is to sell memberships—they won the election here, which means that you are going to pay them to bargain for you. That is their job and while I hoped you would vote for A. F. of L. and gave you the reasons why, we don't have any friends in either organization. We didn't make any deal in advance with either one of them. Inasmuch as I was sure A. F. of L. would win the election, I sent for the organizer and asked him two questions—first, would we be able to operate on a piece work basis under an A. F. of L. contract, and he replied that we would, providing we guaranteed the Union hourly rate. Then I asked him if it would be necessary, under their contract, for our veterans who returned from the war to join their union and I told him that we simply would not sign a contract that made this necessary and he told me that he was sure it could be arranged. I didn't discuss wages, hours, working conditions or anything else with him any more than I did with the CIO, for the reason that I have sat on the Labor Panel on a number of cases in the past two years, as the member from Industry, and I know that when these things are thrashed out pro and con, you wind up with a fair contract. Whether it is with A. F. of L.

(Testimony of Daniel P. O'Keefe.)

or CIO, you can figure you are going to have practically the same kind of a deal that other firms in the same line are getting. That is, in our case, the Continental Can Company across the street, Boyle Manufacturing Company or the American Can Company all have shear work and press work, welding work, machine work and so on, just the same as we do. They are all working under a CIO contract and we know in advance we would have to accept practically the same terms and conditions. Or if CIO found that the Western Stove Company, who are operating under an A. F. of L. contract, had something that was a little better here or there, this would be included in the contract, and naturally we could not or would not take exception to them. The same thing is true if the A. F. of L. had won—they would present a contract such as they have with the Western Stove Company, or if they discovered that the CIO contract with Boyle or Continental Can paid a little more for certain jobs, they would point this out and insist on it being written into their contract. Therefore the wages, hours, conditions, etc. were not given any thought, as far as we were concerned. We do want our employees to have as good a deal here as they would get any place else in the same line of business.

As I explained to you last Tuesday, we are, you might say, affiliated with the Building Industry; that is, our floor furnaces are all installed in new buildings; our wall heaters are all installed in new buildings; water heaters, if we made any quantity,

(Testimony of Daniel P. O'Keefe.)

would necessarily be installed in new buildings. I don't need to tell you who controls the new buildings. If you didn't belong to the A. F. of L., you could not get the job shoveling out the dirt after the plasterer was through—let alone anything more important—if you did it for nothing, unless you belonged to the A. F. of L. union. Therefore, it is absolutely impossible for us to continue in the furnace or wall heater business. Now on water heaters—there are always a few replacements sold by stores other than plumbers, where they can find a plumber who can get the permit and connect. This is the kind of business we used to get a little of. In other words, we made a few hundred water heaters per month and sold them through these sources. Due to the fact that we made so few, it was not economy to spend a lot of money tooling up to get on a production basis; therefore, our boilers cost us more to make than we can buy them for from an outside source. So, the reason that I hoped you would vote for the A. F. of L. last Tuesday was that with the advertising we have done, our name is well known and we believe we could sell more water heaters than any other water heater manufacturer in Southern California, if the plumbers would buy and install them in new buildings. However, as far as they are concerned, our water heaters might just as well be marked "Made in Japan" as not to have the A. F. of L. label on them, which means that unless we made other arrangements for manufacturing

(Testimony of Daniel P. O'Keefe.)

these, we are not going to do much in the water heater business. We had already turned this department over to Bill Durant, who has done such an outstanding job with the Government during the war, to take charge of design, tooling up, manufacturing and selling. However, since the election, Mr. Durant will not accept, inasmuch as he feels he cannot afford to be a failure at anything he undertakes and he figures that selling water heaters made by CIO men to A. F. of L. builders is a lot harder than selling refrigerators to the eskimos, and he would rather work on something along lines of less resistance.

But I might say that I reconciled all this, inasmuch as it was your wishes, but Saturday in playing golf with Glenn Doughty, a contractor friend of mine, who built thousands of houses before the war and is now getting ready to build 5000, said: "I saw in the paper where your plant has gone CIO" and I said "Yes" and he said, "Well, I am awfully sorry Parkie, because you know I wanted to give you our business, but practically all of the building contractors in Southern California (I think it was 300) have signed up with A. F. of L. that they will not employ anything but A. F. of L. labor in their construction and that they will not do business with subcontractors who do not employ A. F. of L. labor. So therefore, there is just nothing I can do about it and I am awfully sorry." Last night we were out to Phyllis's for dinner and Matt Flynn, a building contractor who builds by the hundreds (in fact

(Testimony of Daniel P. O'Keefe.)

he used to have several hundred jobs going at one time) was there. He has just bought 800 acres out near La Canada and is going to subdivide, build and sell. Now 800 acres means a lot of houses and he being a friend of the family, naturally he would hardly have to ask for the business, but here he is apologizing to his friends because he can't give them the business and explaining the reasons why. While it hurts us like everything to lose the business, I might also say it is humiliating when these fellows also say, "You must have the dumbest clucks in the world working for you when they are in the Building Trades Industry and vote CIO." All we can do is to hang our heads—there is not much we can say. However, I said, "Don't say that—you are talking about my friends."

You know after all, there is only a little difference between success and failure—that little difference comes in exercising good judgment. If you will notice, the people who are successful have usually done the right thing at the right time, where the fellow who has failed will say, "Well, I made a mistake—I bet on the wrong horse," as if it were a game of chance, when the truth of the matter way, it was just bad judgment. I would like to ask—how many of you, if you were in the plastering business, would join the CIO and expect to make a living. We are almost as closely affiliated with the Building Trades as the plasterers are. This never was as true before as it is now, for the reason that the FHA will now include in the financing of houses

(Testimony of Daniel P. O'Keefe.)

the appliances, such as the range, water heater, etc. This means that the builders are going to install the ranges along with the other appliances. John Carlson, our salesman who was going to be in charge of the San Francisco office, which we were going to open, can tell you, if he is here today, that you reduced the possibility of range sales in Northern California at least 70 per cent. Now, under these conditions, it will not pay us to open a branch in San Francisco, unless we can make some kind of arrangements for the manufacture of our ranges that will be satisfactory to the A. F. of L.

It seems a shame that this should come at a time when I think we have a design that is so much ahead of anything on the market; when we are making dies and equipment second to none in the United States; when our pickling and enameling rooms are going to be the acme of perfection; when we already have a second enameling oven practically ready to be shipped. While we were going to have to sell our ranges at the price in effect before the war, nevertheless we figured that with the quantities of one number that we could run at a time, we could reduce the cost enough to still make money. This, together with three or four thousand water heaters a month and as many furnaces, a great number of wall heaters, etc., the future looked brighter than it ever did since we have been in business, when all of a sudden, I presume spurred on by big promises and maybe a desire to do some

(Testimony of Daniel P. O'Keefe.)

harm, a majority of you, through bad judgment, poor information or some other reason, have thrown up a curtain that makes things darker than they have ever been. Now why you should do this, or who among you that wished to work a hardship on the rest, I don't know. I cannot imagine that it would be fellows like Louie Ortega, inasmuch as he knows I have kept him on the job several times when he was to be let out, and he made \$1.80 per hour for the past two years, due to our piece work system, where the rate for welders would could read blue prints was \$1.20 per hour, in some plants with CIO contracts. It surely could not be Felix Ruiz, because he knows he was let out several times and I made the foreman take him back and he made \$1.80 per hour for the past two years, for the same reason and same circumstances. It couldn't be a fellow like Benny Pardo because, after his accident, when he was granted \$800.00 by the Industrial Accident Commission, I told Mr. Collins to go right up there and see if we could not have that amount increased, that I didn't think that was enough for all that Benny had suffered, and I believe that Mr. Collins had this amount raised to \$1300.00. And then we were instrumental in suing Parker Rust Proof Company and secured \$1400.00 more, which was turned over to Benny. I could not be Chuy Cano, because he knows that he has been let out many times in different departments and that I always saw to it that he got back on the job. And I could go on and name a lot of people who should have

(Testimony of Daniel P. O'Keefe.)

the interest of the business at heart. Some years ago, when some of the retail stores objected to our merchandise because, they said, we had too many Mexicans and Niggers in our employ, I told them that these Negroes and men of Mexican parentage had been with us for many years and were very loyal and that we would close our doors, if necessary, before we would think of letting one of them out in order to secure more business. It surely is not members of the 5 & Over Club, whom we are still endeavoring to do something for. I can't think who would want to make it hard for this firm to do business by joining a union which is altogether foreign to our line and make it impossible in many cases for us to sell our products.

It has been rumored that there will be no more 5 & Over Club. We hope this is not the case. The 5 & Over Club is a fine organization, very dear to our hearts, and we want to be in a position to cooperate with you to keep it in existence. There have been rumors that we would now try to take the Christmas bonus and pension plan away from you. This is not the case. If we make money, you will get your Christmas Bonus—you have my word for that. The Pension Plan, as you know, is based on a profit sharing basis. That is, after the stockholders set aside 6 per cent on invested capital—which may be invested in new machinery, building or whatever—then you get an amount equal to 15 per cent of your yearly salary, if this does not exceed 25 per cent of the earnings.

(Testimony of Daniel P. O'Keefe.)

Now, I realize that the election is over—you have voted CIO. Even if you changed your minds tomorrow, we could not have another election for at least six months and maybe a year. Therefore, if we wish to do business with the builders and in San Francisco territory, we have two alternatives—to contract enough of our labor to a firm with an A. F. of L. contract that would be satisfactory to the A. F. of L., in order that they would take us off the unfair sheet—or to take advantage of the possibilities to sell this business to some one who has an A. F. of L. organization.

I know the old timers around here will realize what I am going through under present conditions. Give yourselves the two alternatives that I have referred to and you will see how hard it is to sleep under these conditions. You and I have been together for a long time, some of you over 20 years. There is nobody in the world that I can feel as much at home with as I do with you and to think that anything would come up now that will sever these relations is something that I cannot bear to think of. Mr. Merritt is discouraged and wants to sell out—Mr. Boyle, who had some dealings with the CIO in Alameda before the Boyle Manufacturing Company sold out, wants to sell out—but this business has been about the only thing that I could think of for the last 25 years. I get more pleasure out of getting down here in the morning and receiving a pleasant good morning from you than anything else I know

(Testimony of Daniel P. O'Keefe.)

of, and while I take a little time off to play golf, nevertheless if I had to give up either getting down here and seeing you every day or give up playing golf, I assure, from a pleasure point of view, I would quit the golf game. Although I am 60 years of age and at what is presumed to be the retiring point, I still want to stay here as long as I am able to toddle around and when the time comes when my opinion is not considered of any value, I hope you will not feel annoyed to see me on the job and tolerate my suggestions.

Thank you.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Mark this.

(The document referred to was marked as Board's Exhibit No. 17, for identification.

Q. (By Mr. Nicoson): I now show you, Mr. O'Keefe, another document consisting of three pages, ask you to examine it and state if that is not the transcript of the third speech or talk that you gave to the employees at or about this time.

A. Yes.

Q. And with the usual qualifications, does it contain substantially the substance of what you said at that time?

A. Yes.

Mr. Nicoson: This, Mr. Collins, is the speech we stipulated took place on or about February 1st; is that correct?

Mr. Collins: Yes.

Mr. Nicoson: I offer it for the record.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: Hearing no objection, it may be admitted.

(The document heretofore marked as Board's Exhibit No. 17, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 17

There are several reasons why I have asked you to be present at this meeting today.

First of all—We are supposed to report on the Pension Plan by the last of January but, due to the fact that the Government agencies have been so slow in their termination of contracts, I mean in taking inventory and figuring up what they allow us for this and that, we have been unable to close our books and, to be candid with you, we do not know how we came out for last year and possibly will not know for another thirty days or more. For this reason, I cannot tell you whether or not there will be money for the Pension Plan. However, I talk with Mr. Mitchell very often and he is under the impression that there will be money available for this Fund. I sincerely hope there is and that there will be sufficient money for this same purpose in 1947, but the time is slipping away and with lots of expense and no income, we hardly know what to expect at this time. However, if everybody puts his shoulder to the wheel when we do get rolling, I feel certain we will make up for lost time and come out all right.

Some time ago I talked to you about having another firm manufacture our products and pro-

(Testimony of Daniel P. O'Keefe.)

ceeded to work out what we felt would be a very satisfactory arrangement. These arrangements were to start February 1st, but inasmuch as this was the last day of the week, we changed the date to February 4th, which is Monday. Consequently, starting Monday, the Pioneer Electric Company will do all of the manufacturing for O'Keefe & Merritt Company. We will handle the sales, shipping and service; also, all new construction work.

In making these arrangements, we not only had ourselves in mind, but we also had your welfare at heart, so we made it a part of the contract that you would lose none of the advantages that you might have previously had with O'Keefe & Merritt Company, while participating in any new ones that will be available through the Pioneer Electric Company. While we know all of the members of the Pioneer Electric Company, of which Mr. Durant maintains the largest partnership interest, nevertheless we wanted to be doubly sure that there would be no change in your status; therefore it is all included in this contract, parts of which I would like to read to you, and anyone desiring to read the entire contract may do so by coming into my office. Inasmuch as the first part of the contract has to do with the leasing and amount of rent to be paid, and so forth, I will start reading where it affects you:

Contract

I want you to know that there is no one in the "doghouse". We did not make this agreement with

(Testimony of Daniel P. O'Keefe.)

the thought of punishing, much less eliminating anyone who has worked for us. I think you are all "swell" fellows and we are doing what we think is best for you.

It is my understanding that the scale of wages to be paid by the Pioneer Electric is considerably more, in many cases, than you were receiving from us. Therefore, inasmuch as I told you sometime ago that we did appreciate your cooperation and that we would not let you down, we will give you back pay from January 1st at the rate set by the new company, provided you remain in their employ for thirty days; that is, we will make this payment on March 1st to all employees who transfer to Pioneer Electric Company and are with them until that time.

I want to thank you on behalf of Mr. Merritt, Bill and myself, as well as everyone else connected with the Firm, for the splendid cooperation you have given us all these years and, if at any time we should go back to manufacturing our own products, I can assure you we will be only too happy to have you with us again.

While I am saying goodbye for Mr. Merritt and myself as employers, I hope we are not saying goodbye as friends. We will both be here every day as usual, designing and selling, and doing everything we can to keep the business going, which means permanent employment for all of you with the Pioneer Electric Company and this, we believe, is the thing that counts.

I know it is not necessary for me to introduce Mr.

(Testimony of Daniel P. O'Keefe.)

Durant of the Pioneer Electric Company. All of you have seen him do wonders around here during the war, and I am sure you all have the utmost confidence in him. Inasmuch as he is leaving for Washington Sunday and will not be here to greet you on Monday morning, he would like to say a few words at this time.

[Endorsed]: Filed March 21, 1946.

Mr. Nicoson: Your Honor, I have not had an opportunity, in compliance with the Board's rules and regulations, to have duplicate copies of those made. I would ask permission to be accorded that privilege and have one of your stenographers make copies so the two of them may go into the record.

Trial Examiner Kent: Yes, the three exhibits may be withdrawn for the purpose of making second copies of these exhibits.

Mr. Nicoson: Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 18, for identification.)

Mr. Nicoson: Counsel, I have been handed by Mr. Collins this morning a document of one sheet which I have had marked Board's Exhibit 18.

I am willing to stipulate that this is the transcript and substance of the speech or talk Mr. Collins gave to the employees sometime between the second speech of Mr. O'Keefe and the third speech, the exact date we are not able to fix any better than that.

Mr. Collins: Mr. Nicoson, in connection with this speech here, I should like to make the state-

(Testimony of Daniel P. O'Keefe.)

ment, for the record, that this is the speech that Mr. Spallino referred to that was made during the time the CIO was having those demonstrations out there.

I have lost my original transcript. I had my secretary [996] take this off from her notes, part of it. The part down at the last there, where I told them not to use any screw drivers or wrenches, and so on, and not to argue with the pickets and so on, I added with pencil notations at the time I made the speech; the latter part is to the best of my recollection. The first part is from her notes.

I think I can point out to you the part that is from my secretary's notes. Beginning with the sixth line from the bottom, that is the part I have added, to the best of my recollection. With that statement, I will accept the stipulation.

Mr. Nicoson: I think I can stipulate if you will just permit me to check that just a moment.

Please mark this for identification.

(The document referred to was marked as Board's Exhibit No. 19, for identification.)

Q. (By Mr. Nicoson): Mr. O'Keefe, I now hand you a document of three pages, which I have had marked for identification as Board's Exhibit 19, and ask you to examine and state, if you know, what it is.

A. Yes. This is the agreement we made with Pioneer Electric Company for the manufacture of our products.

(Testimony of Daniel P. O'Keefe.)

Q. That was entered into on or about the 2nd day of January, 1946; is that correct?

A. I don't remember the date on it, except by what I would [997] see there.

Q. It does show the date of the 2nd day of January, 1946? A. Yes.

Q. Is it your recollection that is approximately correct? A. Yes.

Q. Directing your attention to the third page of that document, and particularly to the writing under the words "O'Keefe and Merritt, a corporation, first party," is that your signature there (indicating)? A. Yes.

Q. And also directing your attention to the writing under the words "Pioneer Electric Company, a co-partnership, second party," is that the signature of Mr. W. G. Durant? A. Yes.

Mr. Nicoson: I offer this in evidence as Board's Exhibit 19.

Mr. Collins: No objection.

Trial Examiner Kent: It may be received.

(The document hereofore marked as Board's Exhibit No. 19, for identification, was received in evidence.)

(Testimony of Daniel P. O'Keefe.)

BOARD'S EXHIBIT NO. 19
LEASE AGREEMENT

This agreement, made this 2nd day of January, 1946, between O'Keefe & Merritt Co., a corporation, Hereinafter known as First Party, and Pioneer Electric Company, a copartnership, hereinafter known as Second Party,

Witnesseth:

That whereas First Party desires to lease to Second Party the manufacturing facilities of its plant located at 3700 East Olympic Boulevard, Los Angeles, California, which facilities are described in more detail hereinafter,

And whereas said First Party desires that all employees working for said First Party shall work with said Second Party, if they so desire, with no loss in wages or other advantages which they now enjoy,

And whereas said Second Party desires to lease the said plant and facilities and hire all employees, if they so desire, that are now working for First Party and maintain for them all benefits which they now enjoy, including seniority,

It is therefore agreed by and between the parties hereto as follows:

First Party does let and Second Party does hereby take that portion of the First Party's plant located at 3700 East Olympic Boulevard, Los Angeles, California, (excepting therefrom all front offices, service and warehouse) including the use of all

(Testimony of Daniel P. O'Keefe.)

machinery and other equipment and facilities located therein for a period commencing on the 31st day of January, 1946, and ending on the 31st day of December, 1946.

Second Party hereby covenants and agrees to pay to said First Party an annual rental at the rate of \$48,000.00 per annum, payable quarterly.

Second Party agrees to quit and surrender the premises at the expiration of said term in as good a state and conditions as they were in at the beginning of said term, reasonable use and wear thereof and damages by the elements excepted.

Second Party agrees that it will not assign this lease nor let or sublet the whole or any part of the said premises or make any alterations therein without the written consent of the First Party nor will the said premises be used for the manufacture of any other articles excepting the O'Keefe & Merritt ranges, hot water heaters, circulating heaters, floor furnaces and generators unless the written consent of First Party is first obtained.

Second Party agrees to manufacture any and all products required of it by the First Party and according to the specification of First Party for the term of this lease, all of which is to be done pursuant to the standard of care required of it by First Party.

First Party agrees to pay Second Party for said services its cost of labor plus two and one-half per cent (2½%) and to furnish all material and equip-

(Testimony of Daniel P. O'Keefe.)

ment (if such is not already in the plant) necessary to perform said service.

And, in addition, First Party agrees to pay Second Party an amount sufficient to cover the additional expense of providing the employees with all the benefits they would have enjoyed had they been employed by First Party. The benefits referred to are as follows:

1—Pension Fund. As per O'Keefe & Merritt Plan set forth in Permit No. 76325-LA, issued by the Department of Investment, Division of Corporations, State of California, it being understood that, in the event that Second Party does not renew this lease, the employees come back to work for First Party, then First Party may, at its election, deposit this fund in its Pension Fund to inure to the benefit of said employees.

2—Paid Up Insurance.

3—Contribution of Five and Over Club.

4—Christmas Bonuses. (If not included in vacation fund in Union contract.)

5—It is specifically understood and agreed between the parties hereto that there shall be no loss of seniority or any other benefits by reason of their employment by Second Party.

First Party shall pay all taxes and insurance on the premises and equipment in the premises and shall furnish all utilities and shall keep the premises in repair.

In witness whereof, the parties hereto have affixed

(Testimony of Daniel P. O'Keefe.)
their hands and seals the day and year first above
written.

O'KEEFE & MERRITT CO.,
a corporation

First Party

By /s/ D. P. O'KEEFE,
Pres.

PIONEER ELECTRIC
COMPANY, a copartnership
Second Party

By /s/ W. G. DURANT,

[Endorsed]: . Filed March 21, 1946.

Mr. Nicoson: In connection with the document I have had marked as Board's Exhibit 18, and with the statement Mr. Collins made concerning the construction of this document, he and I are willing to stipulate that this document contains the substance of what he presently recollects that [998] he stated at that time and place. It is also stipulated that it is possible that other things were said at that time, but that Mr. Collins does not recall them. With that stipulation, I offer this document in evidence.

Trial Examiner Kent: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 18, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 18

Fellow Employees:

Mr. O'Keefe talked with you a few days ago and,

(Testimony of Daniel P. O'Keefe.)

I think, outlined the company's position on this Union controversy very well. He explained to you why it was that, although he was not trying to sell you either Union, he felt that the A. F. of L. was best for us for the reason that, particularly, in order to sell our Ranges, Floor Furnaces and Water Heaters, we would be in a position to have them connected up with A. F. of L. workers who are in the building trades.

Nevertheless, I have been bargaining, in good faith, with the CIO in order to secure peaceful labor conditions so that there would be no loss in pay or any trouble. I agreed to pay the highest rate paid in the stove industry in this area and I have called to their attention that A. F. of L. has just signed up Western Stove and are about to sign at Gaffers & Sattler. Both contracts represent a wage increase. We have agreed to meet it and to put it into effect.

I can assure you that the company is going to do everything possible to maintain peaceful labor conditions. None of you is going to be forced into any Union you do not want to join.

During the current difficulties, the plant will open at 8 AM and the employees' entrance will be through the shipping department. I discussed this matter today with the police department and they told me to have all the employees come through the shipping department so that they would not have the long line from Olympic Boulevard to the employees' entrance to protect.

(Testimony of Daniel P. O'Keefe.)

The A. F. of L. have assured me that they will see that any employees who want to work will get into the plant without getting hurt.

Do not start any fight with the pickets. Don't argue with them. If you are afraid of any one, ask the nearest officer to help you and he will take you into the plant.

If you want to work, come into the plant and don't be afraid of anyone.

[Endorsed]: Filed March 21, 1946.

Mr. Collins: It could not have been very much, because the speech was not but about two minutes long.

Mr. Nicoson: I think it could not have been over about four or five lines.

Q. (By Mr. Nicoson): Mr. O'Keefe, yesterday during your examination I asked you if there were any other written contracts in writing passing between the O'Keefe and Merritt Company and Pioneer Electric Company, during its existence, up to V-J Day, and you said you did not recall, and I asked you to make search in your files and if there were anything asked you to bring it in. Do you recall that?

A. Yes.

Mr. Nicoson: Mark this, please.

(The document referred to was marked as Board's Exhibit No. 20, for identification.)

Q. (By Mr. Nicoson): I now show you a document, which for the purpose of identification, has been marked Board's Exhibit 20, and ask you to

(Testimony of Daniel P. O'Keefe.)

examine that and state if you know [999] whether or not that is a writing that you have produced in accordance with my request as being between the Pioneer Electric Company and O'Keefe and Merritt during that period. A. Yes.

Q. That is a copy of an original document, isn't it? Do you know who signed for O'Keefe and Merritt Company?

A. I don't know that we signed it. I asked Boyle to give me this, you know, I asked him if he would, and he said, "Well, you write what you want me to sign there and I will sign it for you." So I don't think that it had any signature from me, because there was no obligation on our part to give him anything. It was all the other way.

Q. Now, down in the left-hand corner partly typed and partly written, there are words: "Accepted August 20, 1942, Pioneer Electric Company, By W. J. Boyle." Is that Mr. Boyle's signature?

A. Yes, sir.

Q. That is Willis J. Boyle, isn't it?

A. Yes.

Mr. Nicoson: I offer this as Board's Exhibit 20.

Q. Again showing you, Mr. O'Keefe, Board's Exhibit No. 19 in evidence, which, I believe, you described as being the arrangements you made with Pioneer to manufacture your products,—

A. Yes.

Q. —I will ask you if Pioneer has actually taken over the manufacture of products under that particular lease. A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. Do you know when that occurred, the taking over occurred?

A. I believe it was February the 4th, I think.

Mr. Collins: May we go off the record a minute?

Trial Examiner Kent: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Q. (By Mr. Nicoson): Now, I think I asked you yesterday if you knew an L. J. Mitchell, and if he was an employee of the O'Keefe and Merritt. I believe you answered yes. A. That is right.

Q. Is Mr. Mitchell now employed by O'Keefe and Merritt Company? A. Yes.

Q. I will ask you if you know whether or not Mr. Mitchell owns any stock in the O'Keefe and Merritt Corporation. A. He does not. [1001]

Q. With respect to Robert J. Merritt, I believe you testified that he was the secretary-treasurer of O'Keefe and Merritt. I am not sure I asked you to fix how long Mr. Merritt had been secretary-treasurer. Can you do that for us? A. No.

Q. About as long as you have been president?

A. I think so. I think that is about it.

Q. I think you testified yesterday to your best recollection it was at least 20 years. A. Yes.

Q. You had been president of the company?

A. Approximately. Yes, I would say approximately.

Q. What I am leading up to, he was secretary-

(Testimony of Daniel P. O'Keefe.)

treasurer of the company throughout the war years and up to the present time? A. Yes.

Q. I will ask you, if you know, whether or not Mr. Robert J. Merritt owns any stock in the O'Keefe & Merritt Company. A. Yes.

Q. Could you give us the amount in percentages? I am not particularly interested in the number of shares.

A. My estimate would be about one-sixth.

Q. I know you can't be positive about that without the stock book. I am showing you now a certified copy of the [1002] original articles of incorporation, a photostatic copy, and direct your attention to the second page where under Article 7 it sets out the number of shares, and without quibbling too much about arithmetic that shows, does it not, that Mr. R. J. Merritt owned approximately a third of the stock at that time? Is that correct?

A. Well, it must be. I didn't remember it that way, but my impression was that he owned about half that much.

Mr. Nicoson: Well, I suppose we better mark this.

Mr. Collins: What is the date of that instrument?

The Witness: That is when we organized.

Mr. Nicoson: That is when they were originally organized.

Mr. Collins: 20 years ago.

Mr. Nicoson: Yes. I suppose we better have it marked so the record will be complete.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I object to that upon the ground it does not tend to prove or disapprove anything at issue in this case. Undoubtedly there were a lot of stock transfers since that time.

The Witness: Yes, there have been a great many changes since that time. I only say I didn't remember even that it was that way to start with.

Q. (By Mr. Nicoson): Probably don't remember that you held that many shares yourself? [1003]

A. Yes, I remembered that, but I thought that Mr. and Mrs. Merritt's stock was equally divided. I mean, that was the impression I had in my mind, and I was sure that altogether it was only one-sixth, but I also very likely might be entirely wrong.

Mr. Nicoson: Will the reporter please mark this for identification?

(Thereupon, the document referred to was marked as Board's Exhibit 21, for identification.)

Mr. Nicoson: I offer for the record a certified copy of the original articles of incorporation and show it to counsel.

Trial Examiner Kent: Is may be admitted.

Mr. Garrett: What is that, 20?

Mr. Nicoson: 21.

Mr. Garrett: Does Board's Exhibit 20 have any date?

Mr. Collins: I wish to move at this time that Board's exhibit last in order be stricken from the record on the ground it is not the best evidence. Any transaction with anybody that was entered into 20 years ago is not the best evidence as to what the

(Testimony of Daniel P. O'Keefe.)

stock situation would be today or at the time the alleged unfair labor activities are charged against this respondent.

I submit that the best evidence would be the stock records of the corporation. [1004]

Mr. Nicoson: I think I agree with counsel, but I am trying to obviate bringing in the stock books if this witness' recollection is anyways close to right and he feels that he can approximate the holdings; that is good enough for me. If you insist on bringing them in——

Mr. Collins: No, I don't. I am willing to do this; I am willing to send somebody out to the telephone and call the secretary out there and have them look at the stock transfer and tell you exactly how many shares Mr. Merritt has, if that will save time. We won't get the record cluttered up with some misinformation then. I am inclined to believe Mr. O'Keefe is right in his estimate of what Mr. Merritt has, namely, one-sixth.

Mr. Nicoson: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

We will recess while Mr. William O'Keefe calls his office and gets the present status of the stockholders of the O'Keefe and Merritt Corporation.

(Short recess taken.)

Trial Examiner Kent: Back on the record following the recess.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I have had marked for identification as Board's Exhibit No. 22 a sheet of paper on which there are [1005] certain names and figures.

(Thereupon, the document referred to was marked as Board's Exhibit 22, for identification.)

Mr. Nicoson: During the off the record discussion I requested Mr. W. J. O'Keefe to call his office and obtain for us the stock distribution and the individuals holding the stock. He has now presented me with this sheet of paper which I have had marked Board's Exhibit No. 22, showing the percentage of stock held by all of the stockholders. He further states that this situation existed for the last four or five years and perhaps longer. The total number of shares outstanding is not stated, and I for one do not think it is too important for these proceedings, and I am willing to waive that particular figure.

Mr. Garrett: Is all the stock of the same class, Mr. Nicoson, according to the articles of incorporation?

Mr. Nicoson: Beg pardon?

Mr. Garrett: Is all of the stock of the same class?

Mr. Nicoson: I don't know about that.

The Witness: Yes, I can answer that if you want me to. That is right.

Mr. Nicoson: You have an answer and I accept that as if I put the question to the witness.

Trial Examiner Kent: The record may so show.

Mr. Nicoson: I now offer for the record this

(Testimony of Daniel P. O'Keefe.)

Board's [1006] Exhibit 22, which I have shown to all the parties.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked as Board's Exhibit 22, for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 22

W. J. Boyle, Jr.....	8.1%
Arline B. Oliphant.....	0.1%
Louis M. Boyle.....	8.3%
R. J. Merritt.....	12.5%
Lucille A. Merritt.....	16.8%
R. J. Merritt, Jr.....	4.0%
D. P. O'Keefe.....	23.7%
Phyllis J. Mitchell.....	4.8%
W. J. O'Keefe.....	4.8%
Evelyn B. Boyle.....	8.3%
Blanche N. Boyle.....	8.3%
W. J. and L. W. Boyle, Trustee.....	0.1%
Marion E. Jenks.....	0.1%
John E. Boyle.....	0.1%

[Endorsed]: Filed March 21, 1946.

Q. (By Mr. Nicoson): Now, Mr. O'Keefe, yesterday I was questioning you about the transaction with the U. S. Signal Corps. And since the hearing, you informed me today you have had an opportunity to refresh your recollection about that transaction, and you now know more about it than you did. Will you start and tell us just exactly

(Testimony of Daniel P. O'Keefe.)

what happened with respect to that transaction with the Signal Corps, in your own words?

A. As I remember, you asked me if we didn't offer \$80,000.00 and the Signal Corps said that wasn't enough, and then we offered more and bought the parts.

I told you I didn't know whether that—I wasn't familiar with it. I didn't know whether that was correct or not.

Since then I know. I have been thinking it over and I know that Mr. Durant suggested that we buy all of the unfinished contracts, the materials and units on hand that would be in your termination claim with the Signal Corps, and try and dispose of those—that is, finish the units from the parts we had and sell them. [1007]

I told him we weren't interested in that kind of business, we wanted to get the stuff out so we could get going on stoves.

He later took it up with—he then took it up with Mr. Merritt, who gave him the same answer. Then he came back to see me and wanted to know if it would be all right if he got some of the other boys together around there and they put up their own money and would purchase the parts and finish up what they could and sell them. He asked at the same time if we would do some stamping and things for them, which I said we would be glad to do, and help them in any way.

He then contacted the Signal Corps and made

(Testimony of Daniel P. O'Keefe.)

whatever bargain there was—\$88,000.00 or \$105,000.00, I didn't know about those—with the understanding that the Pioneer Electric would give us their check for an amount equal to whatever we were paying the Signal Corps for the articles that he was buying.

This was accomplished. He bought the unfinished stuff. I don't know whether it was deducted from what the Signal Corps owed us or whether we gave them a check for it. I am not familiar with that. I am sure the Pioneer Electric gave us a check for the amount that he paid the Signal Corps—that he agreed on with the Signal Corps for the goods. That is what you wanted?

Q. That is correct. Now I ask you about L. J. Mitchell. [1008] Is that the husband of your daughter Phyllis? A. Yes.

Q. William J. O'Keefe is your son, is that correct? A. Yes.

Q. Is Marion Jenks the daughter of Willis J. Boyle? A. Yes.

Q. And Robert J. Merritt is the son of Robert J. Merritt? A. Yes.

Q. Robert J. Merritt, Jr., I mean. Now, with respect to the stoves and hot water heaters and gas appliances, does the O'Keefe and Merritt Company have any trade name, brand name, I should say?

A. O'Keefe and Merritt brand.

Q. Since Pioneer Electric has taken over the business, or since February 4th, are they still using those brand names on the products, or do you know?

(Testimony of Daniel P. O'Keefe.)

A. Well, they don't sell anything to anybody but us, so we use it, and it is our brand name. They couldn't sell it to anybody else.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. Has the factory ever been used to make floor furnaces for Ward Company under Ward's name, parts and so on?

A. We made parts for Ward, but I don't think we ever made [1009] any furnaces.

Q. How about the furnaces that were sold under Ward Machinery name? A. Yes.

Q. Was there ever any products made for Sears, Roebuck under their name, under their trade name?

A. Yes.

Q. So there have been other occasions when the O'Keefe and Merritt factory was used to make various products for different concerns under different names? A. Yes.

Q. Now, is it anticipated, so far as you know, whether or not Pioneer Electric will make anything that they will sell under their own name or under some trade name?

A. That is one of the ideas.

Q. They will have their own name and make their own products? A. Yes.

Q. Do you know whether the Pioneer Electric Company received the Army-Navy E during the war? A. Yes.

(Testimony of Daniel P. O'Keefe.)

Q. You attended one of the ceremonies, you were invited as a guest? A. Yes.

Q. Have you ever made any speeches to the employees or to [1010] group of employees other than these three that have been put in evidence here by the Board? A. Over what period of time?

Q. From the very beginning, the time you took over as president.

A. Yes, I have made lots of speeches.

Q. Would you be able to estimate how many per year or some kind of an average? A. No.

Q. You have made a lot of them, in other words?

A. Yes, I try to keep the employees informed on most of the things that go on around there. I figure they are interested.

Q. You talked to them at the time that you received the award of merit of the American Legion, did you not? A. Yes.

Q. And you talked to them when your company received the Army and Navy E, did you not?

A. Yes.

Q. When O'Keefe and Merritt received it?

A. Yes.

Q. And you have talked to them at Christmas time and on many other occasions? A. Yes.

Q. Now, I will ask you, did you at any time tell anyone [1011] that they had to join either the American Federation of Labor or the CIO Steelworkers or any other union? A. No.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I object to that as calling for a conclusion.

Mr. Collins: I am asking him if he told them that they had to join.

Mr. Nicoson: Well, that is a conclusion and I think it might invade the province of the Board.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. O'Keefe, did you at any time tell anyone that they would be discriminated against if they did not join some certain union?

A. No.

Q. Did you ever threaten them with any form of punishment, loss of pay, discharge, or anything that you can think of of an unpleasant nature if they joined any union?

A. I can't remember things that I might have said 20 years ago, but in the last five or six years, if that is what you are referring to, that I can remember, I know I didn't.

Q. Did you ever authorize any employee, attorney, manager, or any other officer or any person to threaten or otherwise use your name to coerce employees into or out of any labor organization, within the last five or six years?

Mr. Tyre: I will object to that. It is immaterial and [1012] irrelevant whether or not he authorized agents of the company to make such statements. Whether he authorized them or not the statements of the agents are binding upon the principal in unfair labor practice cases.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I submit this is one of the very issues of this case. There has been some attempt made through the testimony of Charles Spallino that Mr. O'Keefe told him to see Collins, Collins is directing these activities, or something of that nature. I submit this is proper cross-examination.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): You may answer. I will reframe the question. Did you ever authorize any agent or employees or any person to speak for us to intimidate or otherwise coerce employees into or out of any labor organization within the past four or five years?

Mr. Tyre: I object.

Mr. Nicoson: I will have to object to it on the ground it calls for a legal conclusion and also invades the province of the Board.

Mr. Collins: Miss Reporter, will you please read the question the Trial Examiner has authorized to be answered?

(The question was read.)

The Witness: No.

Trial Examiner Kent: The answer may be taken. It is in the record. [1013]

Q. (By Mr. Collins): Mr. O'Keefe, referring to page 917 of the official record and report of this case, a witness by the name of Charles Spallino is testifying. It is on page 917 at approximately line 10:

“Did you or did you not have reference to any particular person when you use the term

(Testimony of Daniel P. O'Keefe.)

the ruling power of O'Keefe and Merritt Company?

“A. Well, between Collins and Bill O'Keefe is the ruling power of O'Keefe and Merritt. That is the only way I can explain that.”

I will ask you, is Bill O'Keefe or Collins the Ruling power of O'Keefe and Merritt?

Mr. Tyre: I will object to that. It calls for a conclusion of this witness.

Mr. Collins: One within the province of this man's knowledge. He is the president of the corporation. He ought to know who the ruling power is.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): You may answer.

A. You asked me the ruling power was—

Q. Collins or Bill O'Keefe, or both of them?

A. No.

Q. Now, Mr. O'Keefe, R. J. Merritt, Jr., is not an officer of the O'Keefe and Merritt Company; is he?

A. No. [1014]

Q. Is W. G. Durant an officer? A. No.

Q. Is Lewis Boyle an officer? A. No.

Q. Is Marion Jenks an officer? A. No.

Q. Is L. G. Mitchell an officer? A. No.

Q. Are any of these people, R. J. Merritt, Jr., W. G. Durant, Lewis Boyle, Marion Jenks, L. G. Mitchell, on the board of directors of the O'Keefe and Merritt Company. A. No.

Q. Do you have any employees, other than W. G.

(Testimony of Daniel P. O'Keefe.)

Durant and Lewis Boyle, who have outside activities, businesses of their own, and so on?

A. Yes.

Q. Would one of those be Mr. Atchison?

A. Yes.

Q. What is his capacity with O'Keefe and Merritt?

A. He is the advertising manager.

Q. Does he have an office in your building?

A. Yes.

Q. Does he not also have an office down town some place where he conducts his advertising business?

A. I think it is out on Wilshire Boulevard.

Q. He has other clients besides yourself?

A. Yes.

Q. White Motors is one of them, I believe?

A. Yes.

Q. Does Mr. Collins, your attorney, have offices in your buildings?

A. Yes.

Q. Does he also have offices down town?

A. Yes.

Q. Does he have other activities, other clients and businesses, besides working for you?

A. Yes.

Mr. Nicoson: I will stipulate he does.

Q. (By Mr. Collins): Do you have an employee by the name of B. L. Caldwell?

A. Yes.

Q. What is his job with your company?

A. Credit manager.

Q. Does he have any other outside activities?

A. I believe.

(Testimony of Daniel P. O'Keefe.)

Q. Does Mr. Louie Mitchell have any other activity besides an employee of the O'Keefe and Merritt and partner in Pioneer?

A. I don't know just what he has at the present time. I know he was—for three or four years he was in the James [1016] Graham Company.

Q. Was that within the last two or three years?

A. Yes. I don't know whether he is still in it or not.

Q. Does he have any operations in connection with oil drilling or oil wells?

A. Yes, I believe he is in that, too.

Q. Does he have any stock market manipulations he works with?

A. I am afraid so.

Mr. Garrett: What is his position with the company?

Q. (By Mr. Collins): What is his position with O'Keefe and Merritt?

A. He is auditor.

Mr. Garrett: Are you trying to get the man's job?

Q. (By Mr. Collins): Does Lewis Boyle have any other occupation or profession or business relations, except as a stockholder of the O'Keefe and Merritt Company and a partner in the Pioneer Electric Company?

A. Yes.

Q. What are they, if you know?

A. Outside of his orchid farm I am not familiar—

Q. Is he in the oil well drilling business?

A. I don't know.

Q. He is a wealthy man, in any connection?

(Testimony of Daniel P. O'Keefe.)

A. Yes. [1017]

Q. Willis Boyle, does he have any other activities besides being a stockholder and a director of the O'Keefe and Merritt, and a partner in the Pioneer Electric Company?

A. Yes. He is director of one or two banks, and he has a lot of outside interests. I don't know what they are, though.

Q. All during the time we have been discussing here, didn't he have an office both in the Pioneer Electric Company and one down town?

A. I think he closed his office down town.

Q. When did he close it?

A. I don't know.

Q. But he did have one during the war; isn't that right?

A. I never was in his office down town, so I don't know.

Mr. Nicoson: May I interrupt just a second? You used the words Pioneer Electric Company. Was that intentional? You said he had an office in the Pioneer Electric.

Mr. Collins: Yes, he did have one. He does now.

Q. (By Mr. Collins): Did Mr. Boyle have an office in the Pioneer Electric Company?

A. Yes.

Q. As a matter of fact, he has his office in the Pioneer and not in the O'Keefe and Merritt Company; isn't that true?

A. Well, he has his office over there in the same

(Testimony of Daniel P. O'Keefe.)

building. We are all in the same building, and he has his office over there. [1018]

Q. During the war, when the Pioneer Electric was in that approximately 12,000 square feet of area fenced off from the rest of the O'Keefe and Merritt Company, isn't it a fact he had an office built in there, a special office built in there?

A. That is right.

Q. Wasn't that office torn down when he started reconverting the factory? A. That is right.

Q. Didn't he have another new and special office built for himself in that part of the factory that is now leased to the Pioneer Electric Company?

A. Well, he has a special office marked off as part of the lease; it is understood that his office goes with the rest of the factory to the Pioneer.

Q. He, likewise, is an extremely wealthy man and has numerous other activities besides these we have mentioned here?

A. I don't know whether "extremely" is the right word or not. He seems to be very well fixed.

Mr. Nicoson: I take it the answer to the rest of the question is yes.

Q. (By Mr. Collins): Is he engaged actively in drilling oil wells at the moment?

A. I think so.

Q. W. J. O'Keefe, your son here, does he have any other activities, other than an employee of the O'Keefe and Merritt? [1019] A. Yes.

Q. Is he an owner or partner in a foundry?

(Testimony of Daniel P. O'Keefe.)

A. I understand he is one of the owners in a foundry.

Q. Entirely separate and apart from the O'Keefe and Merritt Company? A. Yes.

Q. Or the Pioneer Electric Company?

A. That is right.

Q. And is he also the owner of a machine shop business over here on Temple Street some place?

A. Yes, I understand he is.

Q. Now, don't you have a great number of employees who work for you who have little businesses of their own on the side, besides these that I have mentioned, who are in the Pioneer Electric Company?

A. Well, I understand that quite a few of the boys have outside interests.

Q. Now, as a matter of fact, isn't it true that O'Keefe and Merritt Company occasionally subcontract work to the employees they do in their garage or home?

A. Yes, we try to where it helps the employees.

Q. You don't have that work subcontracted with them with the idea of evading any action of the National Labor Relations Board; do you? [1020]

A. No.

Q. Was the purpose in leasing the O'Keefe and Merritt factory to the Pioneer Electric for the purpose of evading any orders of the National Labor Relations Board?

Mr. Nicoson: That is objected to as calling for

(Testimony of Daniel P. O'Keefe.)

a legal conclusion and invading the province of the Board.

Mr. Tyre: I am also going to object, Mr. Examiner, on other grounds. I think Mr. Collins is, in effect, now testifying. I think we may as well be realistic again at this point, as the Examiner suggested yesterday.

Mr. Daniel P. O'Keefe, the client of Mr. Collins, as a matter of fact, is his regular employer and has been for a number of years. This witness is not a witness of the Board. Mr. Collins oughtn't be permitted to cross-examine, asking leading questions as every one of his questions have thus far been. I think the Examiner must require him to treat this witness as his own, except perhaps where certain answers have been given by Mr. O'Keefe to questions asked by Mr. Nicoson. On those particular answers, I think it might be proper to ask a direct question, so that Mr. O'Keefe can deny or affirm that particular answer.

Aside from those, I don't think any of those have been touched so far in this cross examination. I think Mr. Collins should be required to observe the regular rules of evidence and not ask leading questions. [1021]

Mr. Collins: I wish to point out to the Trial Examiner that a witness is always permitted to testify as to his own state of mind. That is the very issue in this case. Is the O'Keefe and Merritt Company and the Pioneer Electric Company one and the

(Testimony of Daniel P. O'Keefe.)

same concern, or is the Pioneer Electric Company the alter ego of the O'Keefe and Merritt Company, and was the Pioneer Electric Company organized, a lease executed, to evade the National Labor Relations Board conducted election? I submit that is the very gist of this issue. That is what we are here for. That is the most pertinent question that could be directed to him.

Now, then, this is cross-examination, but if there is any objection to my adducing this type of evidence from this witness at this time, I submit that in the interest of expediency and in an attempt to expedite this matter so that O'Keefe doesn't have to come down here again and so that we do not have to take up hours of unnecessary time, I think the matter should be brought out at this time. There are a few matters, and I will tell you they will be very few, if any, that are not proper cross-examination. Then I will be glad to get those matters considered as redirect examination and have the witness called by myself. I would merely like to get the record of them while we have Mr. O'Keefe here. Let's get his story in and over with and get him out of here. [1022]

Trial Examiner Kent: Well, I think it is true, of course, I think there is some merit to Mr. Tyre's admonition, as I recollect the questioning——

Mr. Collins: I will reframe the question.

Trial Examiner Kent: Most of the questions I don't think, in fact, were leading. I think you intended to speed up and I don't think they were

(Testimony of Daniel P. O'Keefe.)

dangerously leading from the standpoint of being prejudicial to other parties who might have an adverse interest. I think the last question should be reframed.

Mr. Nicoson: So that the record does not indicate by my silence any agreement with Mr. Collins generally, I think that statement generally as to the purpose of this proceeding is substantial. I do submit that is a matter for the Board to decide, the purpose and the result, and I think we have—Mr. O'Keefe and I have been able to get along here, but I did not submit to him the decision of this case. That is my only position with respect to Mr. Collins' statement, and since he is going to reframe the question, I won't put it in the form of an objection.

Q. (By Mr. Collins): Now, Mr. O'Keefe, with reference to Board's Exhibit 13, being the lease executed in 1942 between Pioneer Electric Company and the O'Keefe and Merritt Company, at the time that you executed that lease, were you having any labor trouble in your factory? [1023]

A. No.

Q. Was that lease executed with the intention in mind of evading any orders of any Board or anything?

Mr. Tyre: I will object to that. That is certainly the type of leading question which I think is entirely improper.

Mr. Collins: I submit this is cross-examination, Mr. Trial Examiner.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I don't object to your stating the intent.

Q. (By Mr. Collins): What was your intent when you executed this lease?

A. Well, we had been having this wiring done by several other—several electrical companies, and Mr. Durant and Mr. Bucknell convinced me, or partly so, that we were paying too much money for it, and that it could be done at a lot less by having proper supervision and ingenuity, and that by having it close to home there we could—he could keep an eye on it as well as to do his own duties, perform his own duties for us, so it was to save money on it, was one of the principal things, and then the expediting it, getting it through when we wanted it was the other reason.

Q. I will show you Board's Exhibit No. 19, being a lease executed the 2nd day of January, 1946, between O'Keefe and Merritt Company and Pioneer Electric Company. I will ask you what was your purpose in executing that lease or the O'Keefe and Merritt Company.

A. Well, we have several reasons for executing this one. Well, in the first place, dating back some length of time, when it looked like the war might be over back in early 1945, Mr. Durant wanted to know where he would stand with the company after the war was over, so he could begin looking around for himself, his own interest, and I told him we would help him in any way we could to get started

(Testimony of Daniel P. O'Keefe.)

in manufacturing something that he could make some money on, because we realized he has a lot of ability, he is an organizer——

Q. May I interrupt just a moment, Mr. O'Keefe? Was this Mr. Durant a valuable man? Was he a high paid man? Can you estimate how much money he received?

A. I don't remember. I don't remember. He was a highly paid man.

Q. Would it amount to around a hundred thousand a year? A. I don't think so.

Q. Over 50,000. A. Yes.

Q. Over seventy five or less than seventy five?

A. I think it was over seventy five.

Q. Very well. Go ahead.

A. And so he had this opportunity to buy some Signal Corps and other stuff which he wanted to finish up, so by renting the building he could do his own—renting the building and [1025] his own employees, he could finish his own stuff. That was one reason.

Another reason was that they had done, Pioneer had done such an excellent job in saving money during the war for us, their cost was so low by comparison with what we were paying to the other several outfits that were doing it, that I thought maybe by having young blood in there, a high powered fellow like Durant and some of his assistants, maybe he could show us how to save money in manufacturing.

And then we had so many labor arguments around

(Testimony of Daniel P. O'Keefe.)

there of different kinds, the A. F. of L. would be—the CIO would be having a dawn patrol around and the A. F. of L. would have some fellows over there to see that the dawn patrol left at dawn, or something, I don't know what, and altogether it looked like it was a lot of trouble for what there was in it for us, and I was getting to an age where I didn't like to be annoyed with too many things, so I figured the easy way would be to lease the building to Pioneer Electric and let them do the worrying about it.

Q. When did you first think about this, when you began to find out about the dawn patrols, or had you thought of it on prior occasions?

Mr. Tyre. I will object. That is certainly a leading question, your Honor.

Mr. Collins: I will withdraw the question. Just a [1026] moment.

Trial Examiner Kent: Read the question.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. O'Keefe, when did you first think of leasing the factory to anybody?

A. I don't know just when I thought about it, but I talked to Durant about it, I would say, in—I would think it was the latter part of 1944 that we—that I figured we could work out something where he could use the tools and equipment and labor and so on in our plant for making something that he could sell, such as stoves. We even talked about the name of the stove. the Bakewell Stove and so on. That was, I think. the beginning of it,

(Testimony of Daniel P. O'Keefe.)

back in, I think probably 1944. I would say the latter part of 1944.

Q. Now then, prior to entering into this lease with the co-partnership known as the Pioneer Electric Company, did you have any discussion with any of your tax consultants concerning the lease?

A. Well, I don't know that we had tax consulting. I think it was—more or less had to do with the pricing of the range, talked it over with several people about being a help in establishing a price on the range, by having the labor done on a contract, it was easy to establish the cost of it that way which it was necessary to give to the O.P.A. in order to get a price established on our products. [1027]

Q. Are there any tax savings to the corporation resulting from this?

A. I don't think I can answer that.

Q. Have you been advised by any of your tax consultants that there are tax advantages by virtue of this sub-leasing?

A. Yes, we have been. I have been advised.

Q. Have you been advised by any of your tax consultants or experts that there are O.P.A. advantages?

A. Yes.

Q. Did you have any other reasons in mind for leasing the factory to the Pioneer Electric Company, that you can think of at this time?

A. Well, yes. I think I could say that one very good reason in my mind was that it would give Durant a chance, Durant and some of the others a

(Testimony of Daniel P. O'Keefe.)

chance to make some money and, of course, being in the higher tax brackets, some of that would be absorbed by the government, and they would have an opportunity to make some money.

Q. You knew there was an election conducted at your factory by the National Labor Relations Board, did you not? A. Yes.

Q. And do you know who won the election?

A. Yes.

Q. Did that election have anything to do with this leasing?

Mr. Nicoson: I object to that as calling for a legal [1028] conclusion, also invading the province of the Board.

Mr. Collins: Well, Mr. Trial Examiner——

Trial Examiner Kent: He may answer.

Mr. Collins: I submit—Very well. It has been ruled on. You may answer.

Trial Examiner Kent: You may answer.

The Witness: Well, it probably did something.

Q. (By Mr. Collins): What did it have to do with it?

A. Well, we were on the unfair list with the A. F. of L. and all our business came, or not all of it but a lot of it was done with the Building Trades, and I figured that we could lease to someone who would work under a contract, that would be satisfactory to the A. F. of L., we would probably be getting off the unfair sheet.

Q. Was that your only reason for leasing the factory?

(Testimony of Daniel P. O'Keefe.)

A. Well, I don't know. That was not the only reason. I mean I have stated three or four reasons there.

Q. In other words, that was just one of the reasons?
A. That was just one of them.

Q. Just one of them.
A. That is right.

Q. Do you know approximately how many employees the Pioneer Electric Company had while they were operating in this 12,000 square feet on Los Palos Street?
A. No. [1029]

Q. Would it have been in the neighborhood of 200 employees?

A. I don't know. There were quite a few, but I never saw their records and I don't know.

Mr. Nicoson: I will stipulate with you that 180 is approximately correct.

Q. (By Mr. Collins): It has been stipulated, Mr. O'Keefe, that there were approximately 180—I will accept the stipulation—that there were approximately 180 employees there.

Mr. Tyre: Just a minute. I am going to object to that stipulation unless we set a time on those 180 employees, when they were there.

Trial Examiner Kent: Yes, I think clearly the time should be set.

Mr. Collins: It was during the time when they had 12,000 square feet in there.

Mr. Nicoson: That is what he said.

Mr. Collins: And it was set then.

Mr. Nicoson: As I understood, that meant from

(Testimony of Daniel P. O'Keefe.)

the time it came into existence up to V-J Day, or immediately thereafter.

Mr. Tyre: Just a minute, then I will accept the stipulation, about 180 up to V-J Day. All right, I have no objection to that.

Q. (By Mr. Collins): Now, Mr. O'Keefe, after V-J Day I [1030] suppose your company received cancellations. A. Yes.

Q. And you, in turn, cancelled your orders with the Pioneer Electric Company. A. Yes.

Q. Was it necessary for the Pioneer Electric Company to have some employees after V-J Day to complete your orders?

A. To complete our orders?

Q. Well, as far as you know, did they have any employees around the factory there in the part that was leased to them or any place else?

A. Oh, yes. They had quite a few employees around there. I don't know how many, that is, I don't know how many they laid off. They laid off quite a few, of course, from the cancellations.

Q. At the time this election was held, do you know whether or not O'Keefe and Merritt included those employees in the list that was submitted to the National Labor Relations Board as a list of those eligible to vote in elections?

A. Well, I had nothing to do with what was submitted to the Board, but I am reasonably sure that anybody that was not on our payroll was not submitted to the Board, and they would not be sub-

(Testimony of Daniel P. O'Keefe.)

mitted any more than if they worked for the Continental Can or anybody else.

Mr. Tyre: I move that answer be stricken now, as being [1031] a conclusion and not responsive to the question.

Mr. Collins: I think it is highly responsive.

Mr. Tyre: Beyond this witness' knowledge, and he so stated, therefore, I move that it all be stricken.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Trial Examiner Kent: What was the answer?

(The answer was read.)

Trial Examiner Kent: The record may remain, except the last clause of the sentence, I think, might be stricken. I think that that is purely a conclusion.

Mr. Tyre: You mean that part of the answer may stay where he says he doesn't know because he was not——

Trial Examiner Kent: No, the last clause. Read the last clause.

(The answer was read as follows: "and they would not be submitted any more than if they worked for the Continental Can or anybody else.")

Trial Examiner Kent: That may be stricken.

Q. (By Mr. Collins): Were those employees of the Pioneer Electric Company that you refer to carried on the payroll or records of the O'Keefe and Merritt Company? A. No.

Q. Did the O'Keefe and Merritt Company make

(Testimony of Daniel P. O'Keefe.)

any return to the Navy Department including the employees of the Pioneer [1032] Electric Company?

A. No.

Q. Did O'Keefe and Merritt Company make any Social Security return to the Department of Internal Revenue on behalf of the employees of the Pioneer Electric Company? A. No.

Q. Did the O'Keefe and Merritt Company make any sales tax returns to the Board of Equalization on behalf of the Pioneer Electric Company?

A. No.

Q. Did the O'Keefe and Merritt Company make anything out of this Pioneer Electric Company other than having their product manufactured at a reduced price and the rent?

A. Nothing, with the exception of what was taken care of in that agreement that I submitted to Mr. Nicoson this morning.

Q. You mean all that O'Keefe and Merritt got out of this deal was their monthly rent, they got their product manufactured cheaper, and more expeditiously? A. Yes.

Q. And then if the profit was too high you got a rebate, if it was 10 per cent?

A. That is right.

Q. And you are referring now to Board's Exhibit 20? A. Yes. [1033]

Q. Did O'Keefe and Merritt Company exercise any control over the Pioneer or its employees other than that of a landlord, as set forth in the lease agreement?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Object to that as calling for a legal conclusion and invading the province of the Board.

Mr. Tyre: And no proper foundation laid, your Honor.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Collins): What control did O'Keefe and Merritt Company exercise over Pioneer Electric Company?

Mr. Nicoson: Same objection.

Mr. Tyre: Same objection by me.

Trial Examiner Kent: The answer may be taken.

Mr. Tyre: Will you instruct the witness, your Honor, to answer that if he knows of his own knowledge?

Trial Examiner Kent: Well, of course, that is necessarily implied. I think the witness would understand that. Now, Mr. Reporter, read the question.

(The question was read.)

The Witness: We inspected the materials that they processed for us, and if they were acceptable—if they were not acceptable, we returned them for re-work. We had an expediter, I believe, spent most of his time following through to see that they produced the parts that we wanted at the time we wanted them, or we needed them, rather.

Q. (By Mr. Collins): What is the situation there now—— [1034]

(Testimony of Daniel P. O'Keefe.)

Excuse me. Are you through with your answer?

A. Well, that is about the only thing we did as far as Pioneer was concerned that I can think of.

Q. What is the situation now with respect to Pioneer?

A. We design for the Pioneer. We design our own stuff and submit it to them. It would be practically the same, and when the ranges are inspected and acceptable, why, that is about all we do at the Pioneer now.

Q. Is there any outside agreement that is not covered by the lease that has been submitted here as Board's Exhibit 19? I will reframe the question. Is there any outside agreement, other than the lease and the agreement set forth in Board's Exhibit 19, between yourself and Pioneer? A. No.

Q. Mr. O'Keefe, it has been testified hereto that Mr. Joe Spallino replaced W. J. O'Keefe as plant superintendent. At the time he was replaced, did you have in mind at that time the fact you have heretofore testified that you might have some other concern manufacture gas ranges?

A. No, I don't think so. I don't know. You have asked me something I don't know. Too many things happen for me to remember what was in my mind at those particular times.

Q. The giving of the job as plant superintendent to Joe Spallino, in place of your son, that took place after the conversation that you had had with Mr. Durant, did it not, that you were going to take care of him after the war and so on?

(Testimony of Daniel P. O'Keefe.)

A. Oh, yes.

Q. Do you have other concerns you subcontract work to, besides [1036] the Pioneer Electric Company?

A. Yes.

Q. Does the O'Keefe and Merritt Company still have any employees?

A. Yes.

Q. Are you able to estimate about how many?

A. No, I couldn't.

Q. Would you say it was less or more than 50?

A. I don't know.

Q. Are you willing to continue negotiations or bargaining through your representatives with the CIO on behalf of the employees that you still have?

A. As you know, I have instructed counsel to so do.

Q. I know it, but I want everybody to know it. Are you willing to sign a contract through your representative with the officers of the CIO, if a satisfactory contract can be arrived at?

A. Yes.

Q. Have you ever seen the contract that the Pioneer Electric Company has signed with the American Federation of Labor and its various locals?

A. No, I don't think so.

Q. Are you willing to sign a contract with the CIO, paying the going rate in the stove industry in this area?

A. Yes. [1037]

Q. As to the employees you still have working for you?

A. Yes.

Q. During the war did you ever act as management representative on the War Labor Board?

(Testimony of Daniel P. O'Keefe.)

A. Yes.

Q. Are you familiar with what is known as maintenance of membership? A. Yes.

Q. Are you willing to incorporate in your contract the customary maintenance of membership clause? A. Yes.

Q. Mr. O'Keefe, at the time that the CIO has been attempting to get a contract from the O'Keefe and Merritt Company, have you ever seen the contract which they submitted to your company?

A. I don't think so.

Q. Are you willing to recognize——

Mr. Nicoson: Pardon me. What was his answer?

Mr. Collins: "I don't think so," he said.

I wish to point out to the Examiner I am surprised at the testimony of this witness. I recall having shown him this contract. I would like to go into it a little more. I am not attempting to impeach the testimony of the witness, I am attempting to refresh his memory.

Trial Examiner Kent: Yes. You may do that.

Q. (By Mr. Collins): Do you recall my bringing this contract (indicating) in your office and discussing various clauses? Maybe not this one, but one like it. Where we went over the question of the American Legion's participation in it and the use of the Five and Over Clubrooms, and that sort of thing?

A. I don't remember you had a contract. I knew you had some parts of the contract you

(Testimony of Daniel P. O'Keefe.)

wanted to talk about. But maybe you did have the whole contract. I didn't read it. Whatever we talked about was the things you thought I should go over.

Q. Are you willing to recognize the CIO as the exclusive bargaining agent for all the employees that you now have on the O'Keefe and Merritt payroll within the appropriate bargaining unit, as set forth in the results of the election won by the CIO?

A. Well, as I understand it, the CIO didn't want the truckdrivers and they now belong to the AFL. I couldn't give the CIO exclusive bargaining rights, inasmuch as——

Q. I am not asking you are you willing to force them into the CIO, I am asking are you willing to let the CIO bargain for your American Federation of Labor truckdrivers, if they so desire?

A. Yes.

Mr. Nicoson: Your question was will he recognize. [1039]

Q. (By Mr. Collins): Will you recognize the union as the sole collective bargaining agent for the employees within the bargaining unit as certified by the National Labor Relations Board?

A. How can I recognize them there, if they don't represent the truckdrivers?

Q. They can bargain for them; can't they?

Mr. Tyre: I will object to that. That is arguing with the witness. Now he is leading the witness. He has had that same answer given twice.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The record may remain. It speaks for itself.

The Witness: I understand that the CIO told you—I think it was you it came through—they did not want the truckdrivers and they should join the AFL. I think we already have that contract with them.

Mr. Nicoson: Just a moment. I want to strike the answer as not being responsive to the question. I don't think it is responsive to what Mr. Collins asked. I don't think it is what he expected, either.

Trial Examiner Kent: I wonder if any counsel, other than the counsel making the inquiry, can make a motion to strike on that ground.

Mr. Nicoson: Your Honor, I have authority for that, too. Not only in California but in about 15 other states, that I [1040] can mention to you, the right to strike the answer as not being responsive goes to either side. If you want me to quote you authority on that, I can do it.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: I will withdraw the question. I will submit the answer may go out. I want to ask this witness one blanket question.

Trial Examiner Kent: It may go out.

Mr. Tyre: I won't stipulate to that. I think the first——

Mr. Collins: The motion was made on behalf of the Board's attorney. I am willing to accept it.

Mr. Tyre: I may argue the question if I want.

(Testimony of Daniel P. O'Keefe.)

The first part, I think, is responsive. The question is, "Would he recognize the CIO?" He said, "How can I recognize the CIO?"

Mr. Nicoson: I withdraw the motion.

Mr. Tyre: I take it the answer will remain?

Mr. Collins: We will start over again.

Trial Examiner Kent: Where are we on the record now?

Mr. Nicoson: I am withdrawing the motion to strike, so the record should remain, I suppose.

Mr. Collins: I am going to start all over again. I am going to ask the witness one question, instead of going through the contract.

Q. (By Mr. Collins): Mr. O'Keefe, are you willing to sign [1041] any sort of a contract that I agree to with the CIO, on behalf of your employees? A. Yes.

Mr. Collins: I will offer again to stipulate: I will sign a contract with the CIO, based on my previous offer in this case.

Mr. Nicoson: I again decline.

Mr. Collins: Very well.

Q. (By Mr. Collins): If I told you, Mr. O'Keefe, I was willing to recognize the union as the sole collective bargaining agent for all its employees within the bargaining unit as certified by the National Labor Relations Board, that would be all right with you? A. Yes.

Q. And if I told you we would sign a mainten-

(Testimony of Daniel P. O'Keefe.)

ance of membership contract, that would be all right with you? A. Yes.

Q. If I asked you to sign a contract granting the CIO the check-off for those employees that they have under their maintenance agreement, would that be all right with you? A. Yes.

Q. If I O.K.'d their hours of work, would that be all right with you? A. Yes.

Mr. Nicoson: Are we talking about the employees now of [1042] O'Keefe and Merritt?

Mr. Collins: I am talking about the employees now of O'Keefe and Merritt all the time; not any Pioneer Electric employees.

The Witness: That is right.

Q. (By Mr. Collins): They have a contract?

A. Yes.

Q. On the question of wages, are you willing to agree to a set of wages being paid at the present time by the Gaffers & Sattler Company, the Wedgewood Company, and the Western Stove Company, all of whom are manufacturing gas ranges in competition with your concern?

A. Yes. I might qualify that answer a little bit. I don't know whether the rates are comparable in San Francisco where the Wedgewoods are made. But Gaffers & Sattler and Western Stove Company are in this territory, and whatever the rate is with them which, I presume, is the same as Wedgewood, it will be satisfactory to us.

Q. Any other advantages that your employees now have, those of the O'Keefe and Merritt Com-

(Testimony of Daniel P. O'Keefe.)

pany, would not be taken away from them by virtue of the signing of this agreement; would they?

A. No.

Q. You would agree to a night-shift bonus for those employees of yours you now have that might work on night shifts [1043] or swing shifts; is that right?

A. Whatever is the going rate and policy.

Q. And the same is true with the question of holidays; is that so? A. That is right.

Q. And you are agreeable to recognizing seniority of the employees; are you not? A. Yes.

Q. If I said to you that the question of seniority, as set forth in the CIO's contract, was a fair one and I agreed to that, that would be agreeable with you? A. Yes.

Q. The same is true with the question of vacations; is it not? A. Yes.

Q. If I O.K.'d the grievance procedure, that would be all right with you? A. Yes.

Q. And the grievance record? A. Yes.

Q. The method of handling people that are discharged? A. Yes.

Q. And recalling them to employment?

A. Yes.

Q. The portion of the contract that refers to benefits and [1044] privileges, if I O.K.'d that, that would be all right with you? A. Yes.

Q. The leave of absence, the same answer?

A. Yes.

Q. Now, the question of veterans. On the ques-

(Testimony of Daniel P. O'Keefe.)

tion of veterans, do you have in the O'Keefe and Merritt factory a room set aside for the O'Keefe and Merritt Post of the American Legion?

A. It is for use of the American Legion and Five and Over Club together.

Q. That is an auditorium in the O'Keefe and Merritt factory; is it not? A. Yes.

Q. What is the approximate size of the auditorium? A. 35 by 75, I think.

Q. Is it equipped with public address systems?

A. Yes.

Q. Stage? A. Yes.

Q. Chairs? A. Yes.

Q. It is a regular small theater, as a matter of fact? A. Yes.

Q. That is where the O'Keefe and Merritt Post of the American [1045] Legion customarily meets?

A. Yes.

Q. Now, then, all problems relating to veterans, are they handled in your factory, as far as your employees are concerned, by the O'Keefe and Merritt Post of the American Legion?

A. All problems—I didn't quite get that.

Q. I will reframe the question. Are you willing to sign any kind of a contract with any union that would deprive the O'Keefe and Merritt Post of the American Legion their right to represent their membership?

A. The American Legion has never represented

(Testimony of Daniel P. O'Keefe.)

their membership on a labor—they have never talked to me on labor questions at all.

Q. What I am trying to get at, Mr. O'Keefe, is you are not going to sign any kind of a labor contract that is going to take any of their rights away from them; is that true? A. That is right.

Q. You wouldn't sign any sort of an agreement that did conflict with the rights of the post of the American Legion in your factory? A. No.

Q. You are willing to sign any sort of an agreement that incorporates what is generally known as a GI Bill of Rights? A. Yes. [1046]

Q. And you will incorporate in this agreement, if I O.K.'d it, that portion relating to group insurance; is that right? A. Yes.

Q. And you will agree to extraordinary rules concerning safety and health; will you not?

A. Yes.

Q. We will exceed the state limits, the rules set forth by the Industrial Accident Commission in the State of California? A. Yes.

Q. And you would grant the union the right to have a bulletin board in your factory?

A. To have a what?

Q. To have a bulletin board? A. Oh, yes.

Q. If I O.K.'d this portion called miscellaneous provisions, that would be agreeable with you; would it not? A. Yes.

Q. And the termination portion, that would be agreeable if I O.K.'d that; is that not so?

A. Yes, sir.

(Testimony of Daniel P. O'Keefe.)

Q. You are still willing to bargain with the CIO for the employees of the O'Keefe and Merritt Company through me as your representative?

A. Yes.

Q. Do you recall having any conversations with Mr. Charles [1047] Spallino within the last year?

A. I have had many of them. I talked to him quite a little.

Q. Do you talk to a great many employees in the factory, as you walk around through there?

A. Yes.

Q. Do you recall having a conversation with Mr. Charles Spallino in your office within the last year? A. Yes.

Mr. Collins: May I have the date of that conversation, Mr. Nicoson? I can't remember.

Mr. Tyre: 27th of January, 1946.

Mr. Collins: 27th of January, 1946.

Mr. Tyre: Of November, excuse me.

Mr. Collins: 27th of November.

Q. (By Mr. Collins): Do you recall on or about the 27th day of November, 1946, having a conversation with Mr. Charles Spallino in your office?

Mr. Nicoson: It couldn't be 1946 yet.

Mr. Collins: 1945. I guess it is 1945.

The Witness: I wouldn't remember the date at all. But somewhere last fall Charlie Spallino and Johnny Levascos came into my office to talk to me, yes.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Collins): Will you relate the conversation as best you can recollect it?

Mr. Nicoson: Couldn't we have the time fixed more definitely [1048] than that? Last fall, that is several months.

Q. (By Mr. Collins): Was that before or after the labor election held at the O'Keefe and Merritt factory?

A. It was before. I recollect now it was before. Shortly before.

Q. Shortly before? A. Yes.

Q. What was the conversation?

A. Charlie had a speech that he was going to make. He was recently elected as—not recently. He was president of the Five and Over Club. He had a speech he wanted to make to the members of the Five and Over Club.

Mr. Tyre: I think this witness should be instructed, as other witnesses have, not to state what he thought took place or what was going to take place; merely to relate the exact conversation between Mr. Levascos, Mr. Spallino, and himself.

Trial Examiner Kent: As near as you can give the conversation. Give the conversation as engaged in by Spallino, yourself, and Levascos.

Q. (By Mr. Collins): Try to use the expression "I said" and "He said." Use that phraseology.

A. Charlie submitted a paper to me with some writing matter on it. I read it. I said I didn't think it was the right kind of a speech to give, it

(Testimony of Daniel P. O'Keefe.)

might get us in trouble. I suggested that it be changed in some places. [1049]

After I made several suggestions, I thought maybe it would be better that he should not make a speech as president of the Five and Over Club for fear anything he might say would be interpreted as reflecting the policy or sentiments of O'Keefe and Merritt Company.

So I told him to just throw it away and whatever I wanted to say to the boys I would say it myself.

Q. Did you tell him he could not make a speech either for or against the A.F.L.?

A. I don't think I told him that.

Q. Did you tell him he could not make a speech either for or against the C.I.O.?

A. No, we didn't mention that.

Q. Did you at any time tell him that you would discriminate against him if he did work either for or against the A.F.L. or for or against the C.I.O.?

A. No.

Q. Do you recall having some conversation with Charles Spallino in your office on a prior occasion concerning union activities?

A. It just seems to me he came in one time to talk about things that were going on in the factory, but I don't remember what was said at all.

Q. Do you recall telling him to go see Collins, or words to that general effect? [1050]

A. Yes, I do.

Q. That is the conversation I am referring to.

(Testimony of Daniel P. O'Keefe.)

Relate, to the best of your recollection, that conversation.

Mr. Tyre: That is objected to, no proper foundation laid as to time, place, and persons present.

Q. (By Mr. Collins): Was anyone else present besides you and Charles Spallino at that time?

A. I don't know.

Q. Was your secretary in the room?

A. I don't know.

Q. It was in your office at the O'Keefe and Merritt factory some time prior to this conversation concerning the speech you just testified to?

A. Yes.

Q. Go ahead and relate the conversation.

A. I don't remember just what was said. But he gave me the impression——

Mr. Tyre: I will object.

The Witness: If that will answer——

Trial Examiner Kent: Well, try and avoid general conclusions. Your present recollection, however, as to what you think he said, the words that were said, the whole thing. Give your present recollection as to what he said at that time.

Q. (By Mr. Collins): Mr. O'Keefe, you don't have to use the exact words of Charles or yourself. Relate the conversation [1051] in your own words.

A. He asked what he would do about encouraging or discouraging men from joining one or the other unions.

Q. Did he ask you which side of the fence you were on? A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. Very well. Proceed with the conversation.

A. I told him that I wouldn't give him any answer to that at all, that Mr. Collins had done business with both A.F.L. and C.I.O. That I knew he represented different firms that had A.F.L. contracts and C.I.O. contracts, and that he would be very familiar with the good and bad of either side, and for him to see him.

I wanted to be very careful I didn't get into any legal entanglements with the National Labor Relations Board. And I recommended—I felt if I recommended one over the other I might get myself in——

Mr. Tyre: I move that last sentence be stricken, your Honor, as a conclusion; not responsive.

Mr. Collins: I submit it is entirely responsive to my question.

Mr. Tyre: What he felt is not part of the conversation. [1052]

Trial Examiner Kent: Read the last clause.

Mr. Collins: The witness can always give the reason for his answer.

(The following portion of the record was read: "I felt if I recommended one over the other I might get myself in——")

Trial Examiner Kent: I think it is entirely responsive. I think it is the reflection of the conversation, rather than the conclusion, as I interpret it.

Mr. Tyre: Let him so state that is what he

(Testimony of Daniel P. O'Keefe.)

stated to Spallino. He said that is the way he felt about it. That is the reason he made that statement. I don't care how he felt. I am interested only in what he stated to Mr. Spallino and what Mr. Spallino stated to him.

Mr. Collins: I think these motions are entirely out of order. The statement of Mr. O'Keefe was interrupted right in the middle. I don't know what he said.

Mr. Tyre: I don't care as long as he was talking about his feelings.

Trial Examiner Kent: Let the witness finish. I will consider the whole answer.

The Witness: —in bad with the National Labor Relations Board.

Q. (By Mr. Collins): Were there legal rights involved?

Mr. Tyre: I will make my motion——

Trial Examiner Kent: Now read the whole answer. [1053]

(The record was read.)

Mr. Tyre: I further move the last two sentences be stricken as being conclusions and not responsive to the question, as to what the conversation was.

Mr. Collins: I think it is entirely responsive and relates to the conversation as best this witness can remember.

Mr. Nicoson: I object unless the witness told that to Mr. Spallino, what he had in his mind at that time. I don't think it is responsive.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: I can't see that the parties are prejudiced. The record may remain.

Q. (By Mr. Collins): Now, Mr. O'Keefe, at the time you had this conversation with Mr. Spallino in your office, did you understand the legal problems involved in conversing with one of your employees concerning labor activities of any kind?

Mr. Tyre: To which I will object for the same reason I stated. That is calling for a state of mind; only what he stated to Mr. Spallino.

Mr. Collins: This is the very crux——

Trial Examiner Kent: I think the question isn't proper. It is practically, in effect, asking the witness whether or not he can legally construe the National Labor Relations Act. Reframe the question.

Mr. Collins: I wish to make an offer of proof at this time. I offer to prove by the testimony of this witness, if [1054] he is permitted to testify, at the time he had a conversaaion with Charles Spallino in his office——

Mr. Tyre: Just a minute. I submit, your Honor, that you merely asked counsel to reframe his question. I am going to object to this entire line. I move he reframe it. If he is going to make an offer, the witness should be excluded.

Trial Examiner Kent: It may not be necessary to make an offer of proof. Try to bring out what you want by questions; maybe you can. I am not restricting you.

Q. (By Mr. Collins): Did you understand the

(Testimony of Daniel P. O'Keefe.)

legal problems involved in conversing with an employee concerning labor activity, when you had this conversation with Charles Spallino?

Mr. Nicoson: Same objection.

Mr. Tyre: Same objection.

Trial Examiner Kent: He may answer that.

The Witness: Well, I am not very familiar with all the details of the law.

Q. (By Mr. Collins): You did know, generally speaking, did you not, that you don't have the right to tell your employees to join or not to join anything? A. That is right.

Mr. Tyre: Object to that as calling for a conclusion; and also strictly leading and suggestive.

Mr. Nicoson: Not a proper statement of law.

Trial Examiner Kent: No. I think the question is [1055] entirely too broad. I don't think counsel intends it should be that broad.

Read the question, Miss Reporter.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Did you tell Charles Spallino that Collins was in charge of the labor activities, and whatever he said was all right with you, or words to that effect?

A. I don't remember saying that. I told him to see you—I think I stated just about the way it was said, that you had the dealings with both C.I.O. and A.F.L. and were familiar with all the law, as well as the activities of the different companies, and to see you.

(Testimony of Daniel P. O'Keefe.)

Q. Why didn't you tell him yourself?

A. Well, I didn't want Charlie doing anything for us around there, for fear he would not do the thing right or that he might get us in trouble by his activities, being president of the Five and Over Club, that anything he did do might reflect on the O'Keefe and Merritt Company.

Q. Were you trying to get him to stop organizing for either the A.F.L. or the C.I.O.?

Mr. Nicoson: I object to that. There is nothing to show from this witness' testimony he knew anything about it so far, if it was a fact.

Mr. Collins: Just a moment.

Q. (By Mr. Collins): Maybe I will reframe the question. [1056] As I recall, the testimony of Mr. Charles Spallino was there was something to the effect that he came in there and asked O'Keefe did he want him—what did he think about labor activities and so on and so forth? O'Keefe, rather than committing himself, said to go and see Collins. The idea was Collins would go out and tell him to organize for the A.F.L.

Mr. Nicoson: That is not what this witness testified to.

Mr. Collins: That is what Charlie Spallino testified to.

Mr. Nicoson: It is not what he testified to in his recitation of the conversation. It may have come up. I don't know, but in his recitation of the conversation he has not said that. He merely said Charlie came up and wanted to talk to him

(Testimony of Daniel P. O'Keefe.)

about some things going on in the factory and he told him to go see you, because you had had all those dealings. I think perhaps it did come up, but he didn't say that.

Mr. Collins: As I recall, that was the testimony of Spallino, and I am trying to find out what the conversation was. If that was it, let's hear it.

Mr. Nicoson: I have no objection to that.

Trial Examiner Kent: We will take a recess at this point to reconvene at 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1057]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: You may proceed.

DANIEL P. O'KEEFE,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. Mr. O'Keefe, calling your attention to the Saturday morning, sometime before an election was held at the O'Keefe and Merritt plant, a conversation is alleged to have been held in the—in or near the shipping department, at which time a

(Testimony of Daniel P. O'Keefe.)

John Miles was present and Angel Defoe was present and a Charles Gatone was present, and possibly others in or near that location. It has been testified that Mr. Charles Spallino was getting the beer together, I believe, for a Five and Over Club. He approached you and had some discussion about some 85 signatures he is alleged to have secured for the A.F.L. Do you recall having a conversation with him at or about that time?

A. No, I don't think it made any——

Q. Do you recall congratulating him for securing 85 signatures?

A. No. But I don't believe I would have congratulated him if he told me so. [1058]

Mr. Tyre: I object to that as self-serving, a conclusion, not responsive.

Q. (By Mr. Collins): Did you or did you not——

Mr. Tyre: Just a minute, Mr. Collins.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Collins): Did you or did you not congratulate him?

A. I just don't know why I would, so I can't answer. I don't remember, that is all.

Q. If you had congratulated him, would you have remembered it?

Mr. Nicoson: I object to that.

Mr. Tyre: I join in the objection.

Mr. Nicoson: It has been asked and answered.

Trial Examiner Kent: Sustain the objection.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Collins): Did you ever congratulate anybody for securing signatures in any union?

Mr. Nicoson: Objected to as immaterial, unless the time and place and persons present are stated.

Mr. Collins: At any time?

Trial Examiner Kent: Reframe the question.

Mr. Collins: What is the ruling?

Trial Examiner Kent: I ruled you should reframe the question.

Q. (By Mr. Collins): Any time within the last year, did you [1059] congratulate any of your employees for securing members in any union?

A. I don't think so, but I don't know.

Q. Did you ever tell Mr. Spallino that you heard that he was using too much pressure to get members for the A.F.of L.?

A. I don't remember telling him, no. If I heard that he was using pressure, I probably would have called it to his attention. I don't remember it.

Q. Now, then, calling your attention to this occasion when Mr. Spallino came into your office and discussed with you something to the effect that the Five and Over Club wanted to know which side of the fence to get on or whatever the testimony was, do you recall anything else that was said between yourself and Charlie at that meeting, Charlie Spallino?

Mr. Tyre: May we have the particular time and place of that conversation?

Mr. Collins: This is the one they have been talking about for three days here.

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: There are a number of conversations. I will object to the conversation, your Honor, unless we have the time and place.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Do you recall having a conversation with Charlie Spallino in your office wherein you told him to talk it over with Collins, do you remember that conversation? [1060]

A. Yes.

Q. Now, then, what else was said at that conversation besides what you have already testified to?

A. I can't remember what else was said. I refrained from saying very much of anything, because I felt all along that Charlie was not acting in good faith, so I didn't talk much to him about either one of the unions or the Five and Over Club.

Q. Then at this time you cannot remember anything more that was said? A. No.

Q. Do you recall him asking you which side the Five and Over Club should take in this contest between the two unions?

A. I think he did ask me that.

Q. And what did you tell him concerning that?

A. I believe I told him that the Five and Over Club had nothing to do with the union activity and should not be on either side. I think I told him that. Now, I don't remember.

Q. Did you tell him that there were legal problems involved that you did not understand, or words to that general effect?

(Testimony of Daniel P. O'Keefe.)

A. Well, I don't remember the words that were used, but I asked him to go to our attorney, figuring there were legal things involved.

Q. I see.

A. I remember distinctly of telling him to see you, that you [1061] were our attorney, and to go to see you.

Q. Did you, Mr. O'Keefe, ever attempt to tell the Five and Over Club what it should do concerning union activities?

A. I have attended so many meetings of the Five and Over Club in the many years gone by that I can't recall what might have been said then, but in the last couple of years I am sure that I did not tell that.

Q. So far as you know, were both unions organizing during working hours inside your factory?

Mr. Nicoson: That is objected to as calling for a conclusion of the witness. If he knows he can tell what he saw.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Have you ever seen anyone in the factory organizing for either union?

A. No.

Q. Have you ever seen anyone in the factory organizing for either union? A. No.

Q. Have you ever heard anyone in the factory attempting to secure members in either union?

A. Yes.

Q. What have you heard?

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: I object.

Mr. Nicoson: I object to that as hearsay.

Q. (By Mr. Collins): What was the time? Where was this, what you heard? Where did this take place?

A. Where did it take place? You asked me in the factory.

Q. Yes. A. It was in the factory.

Q. Where was it? What part of the factory?

A. You are asking me what I heard now?

Q. No. We have to lay a little foundation for that. I don't know what you heard. Was it a conversation?

A. Several people reported to me that Lou Ortega was signing up C.I.O. and that Johnny Levascos was signing up A.F.L.

Mr. Nicoson: I move to strike the answer as not responsive, and also the fact no foundation is laid for it; also the persons making the alleged report have not been identified. Otherwise, immaterial, incompetent, and irrelevant.

Mr. Tyre: I will join in that motion.

Mr. Collins: Just a moment, before your Honor makes a ruling on that. I submit this is entirely relevant. The position of this respondent is that both unions were afforded equal facilities to organize along any peaceful methods they saw fit, so long as the company was not concerned. If these gentlemen will cease and desist for a moment, I will attempt to find out what happened.

Trial Examiner Kent: I will reserve ruling.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: I think the answer should go out until he [1063] lays the proper foundation.

Trial Examiner Kent: Technically, I think, counsel is right. My ruling is going to be I will treat the objection as a motion to strike and permit counsel to lay the foundation.

Q. (By Mr. Collins): Do you recall when this conversation took place? A. No.

Q. Was it before or after the election?

A. I don't remember.

Q. Was it within the last six months?

A. Yes.

Q. Within the last three months?

A. Well, I would say that I heard that Louie Ortega was getting memberships within the last three months. I didn't hear anything that Levascos was doing in the last—I mean, I don't remember just how long I heard that Levascos was signing up members.

Q. Who told you that these men were signing up members?

A. In talking with about 400 or 500 employees it didn't register at all. I mean whoever told me, I just forgot it, and went on; that is all.

Q. Prior to the time that you made this lease to the Pioneer Electric, were you in the factory, in the manufacturing part of the factory most of the time; a great deal of the time? [1064]

A. A great deal of the time, yes.

Q. And it is an open building where you walk

(Testimony of Daniel P. O'Keefe.)

through it and you can see almost everyone; isn't that so?

A. I can see a great number, yes, at one time.

Q. And the employees frequently stop and talk to you; do they? A. Yes.

Q. As a matter of fact, you encourage them to stop and talk to you; isn't that true?

A. I stop and talk to them occasionally, quite often, to encourage them to talk to me.

Q. You probably talked to as many as 25 or 50 employees daily; isn't that true?

A. I don't know what the number would be. I talk to a number of them every day.

Q. There would probably be an average of four or five hundred employees in the factory most of the time; would that be true?

A. I don't think there is that many now; between three and four hundred, I think.

Q. Would you think 25 a day would be a fair average you talk to?

A. No, I don't think—that is, to hold any lengthy conversation, I don't think it would be that.

Q. 10 or 15 of them? [1065]

A. I have never stopped to consider it. It would be only guesswork, if I were guessing as to how many I talked to a day.

Q. Did you ever give any instructions to any of your subordinates in the O'Keefe and Merritt factory concerning union activity?

(Testimony of Daniel P. O'Keefe.)

Mr. Tyre: Just a moment. At this time it appears, your Honor, this particular line is now ended. I move to have the testimony stricken.

Mr. Nicoson: I oppose that. I insist the record remain as it is.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Collins): What instructions have you ever given any of your subordinates in the O'Keefe and Merritt factory with respect to encouraging or discouraging membership in either union?

Mr. Nicoson: May I have that question?

(The question was read.)

Mr. Nicoson: I think that assumes a fact not in evidence. Maybe I missed the preceding question.

Mr. Collins: The allegation of the complaint——

Mr. Nicoson: Would you mind catching me up? Read me the last two questions.

Mr. Collins: This is the first question of this line.

(The record was read.) [1066]

Mr. Nicoson: Did you reframe the one when Mr. Tyre——

Mr. Collins: I reframed it.

Mr. Nicoson: The last two questions and answers.

(The record was read.)

Mr. Nicoson: You see, that is what I mean, first asking if he did and then you say what were

(Testimony of Daniel P. O'Keefe.)

they, and he didn't give you an answer to the other question.

Mr. Collins: Oh, very well.

Q. (By Mr. Collins): Have you ever given any instructions to any of your subordinates in the O'Keefe and Merritt Company with respect to encouraging or discouraging membership in either union? A. That covers a long period of time.

Q. In the last five years. Well, let's get down to the last two years, if that is making you think too hard.

A. I am trying to think of anybody that I talked to about either encouraging or discouraging them.

Q. Well, you just have to give the answer to the best of your recollection. Have you, as far as you can remember, ever given any instructions?

A. I don't know about the instructions. I usually discouraged it myself by my speeches, if that is what you want to know.

Q. Did you ever tell any of your subordinates that you wanted them to discriminate against people for joining either [1067] union?

Mr. Nicoson: I am going to have to object to that. It calls for a conclusion of the witness, a legal conclusion of the witness.

Mr. Collins: Paragraph 10, Page 7 of the complaint states "that respondents by their acts heretofore alleged did interfere with, restrain and coerce their employees and are interfering with, restraining and coercing their employees in the exercise of

(Testimony of Daniel P. O'Keefe.)

rights granted their employees by Section 7 of the Act."

Q. (By Mr. Collins): Now, Mr. O'Keefe, with respect to this first word, have you ever instructed any of your subordinates to interfere with the employees in their attempt to organize a union, either union, within the last year?

Mr. Nicoson: I object to that, first, because it calls for a conclusion of the witness, second, it assumes a fact not in evidence. The testimony of this witness at the present time is that he does not recall that he ever gave any instructions to any person about it.

Trial Examiner Kent: In view of the allegations of the complaint, I think the question may be put.

Mr. Nicoson: That calls for a legal conclusion in any event, and invades the province of the Board.

Mr. Tyre: Your Honor, the question is seeking to ask this witness did you or did you not instruct your employees to [1068] violate the provisions of the National Labor Relations Act, which undoubtedly calls for a legal conclusion as to what is a violation of the Act, which is a matter for this Board to decide.

Mr. Nicoson: Especially in view of the fact that he has testified here that he did not recall giving any instructions to anyone. He said if he personally had done anything, it was not by means of the instructions to any subordinates.

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: He may answer.

Mr. Collins: You may answer.

The Witness: It is so long ago. What is it now?

Q. (By Mr. Collins): What instructions if any, have you given to your employees authorizing or instructing them to interfere with the employees' rights to join any labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: He may answer.

The Witness: I don't think I gave any.

Q. (By Mr. Collins): I will ask you the same question with respect to the word "restrain." Have you authorized any of your subordinates to restrain employees from joining any labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

The Witness: No. [1069]

Q. (By Mr. Collins): Have you instructed any of your subordinates to coerce any of your employees into or out of either labor organization?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

The Witness: What does the word "coerce" mean?

Mr. Nicoson: That is just what I was shooting for all the time. I think that is right, Mr. O'Keefe.

Q. (By Mr. Collins): You don't understand the meaning of the word "coerce"?

A. Not exactly.

(Testimony of Daniel P. O'Keefe.)

Q. Have you instructed any of your subordinates to threaten the employees with any form of punishment if they joined or did not join any labor union?

Mr. Nicoson: Same objection.

Mr. Collins: I submit, if your Honor please, that the word "threaten" is a common word and does not have a legal connotation at all except before this particular tribunal.

Trial Examiner Kent: He may answer.

Mr. Nicoson: I submit that the word "threaten" is not used in the law. That is a new proposition to be urging—I will withdraw that. But I still want my objection to stay in.

The Witness: No.

Q. (By Mr. Collins): You never did? [1070]

A. No.

Q. Have you instructed any of your employees to interfere with the rights of anyone to join any labor organizations?

Mr. Nicoson: Same objection, for the further reason it has been asked and answered. That was his first question.

Trial Examiner Kent: He may answer.

The Witness: Well, I don't know just what you mean when you say interfere with either.

Q. (By Mr. Collins): I mean to slow them down, to stop them, to obstruct them, to interrupt them. It has a number of meanings. I suppose to understand this complaint properly we would have to get Webster's Dictionary, but I am asking you to

(Testimony of Daniel P. O'Keefe.)

the best of your knowledge and your understanding of the word interfere, have you ever **instructed** anybody to interfere with the rights of your employees to join either labor organization?

Mr. Nicoson: Just a moment, please. I submit we are not bound by Mr. Collins' interpretation to the witness. The witness has indicated he does not understand from his own standpoint the meaning of the word interference, so I object to his answer being given on the ground, one, for the reasons previously stated, and second, on the ground that he has now been coached by counsel.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Do you understand the word—— [1071]

Mr. Nicoson: Just to repeat Mr. Collins' oft repeated phrase, that cannot be cured now because of what has transpired through counsel and what has transpired by what I have said. I don't think we can cure the objection by reframing the question now.

Mr. Collins: I am not reframing the question now, Mr. Examiner. I am going to ask him a new question, about the meaning of the word "interfere."

Mr. Nicoson: I know, but his Honor instructed you to reframe the question, and I am saying that it comes too late now, you can't cure the defect. I have been taught that law by Mr. Collins in this proceeding. I would like to use it now for my own advantage.

(Testimony of Daniel P. O'Keefe.)

The Witness: Am I supposed to answer something now?

Trial Examiner Kent: I don't think there is a question pending.

Q. (By Mr. Collins): The question pending is, do you understand the meaning of the word "interfere"? A. You mean by force or——

Q. No, just the word "interfere," do you understand the meaning of that word "interfere," the ordinary dictionary meaning of the word "interfere"?

A. No, I don't believe I get the exact word there. I have an idea what it means, all right.

Q. What is your understanding of the word "interfere"? [1072]

A. That I would obstruct in some way, that I might talk about intefering, meaning I will say that I was in favor of one or not in favor of another, that would be one thing, and if I tried to get in the way and prevent them from doing something. If that is the way the word "interfere" is meant, I didn't do that.

Q. Mr. O'Keefe, I am not asking you now what you did. I am asking you did you instruct any employee to interfere? A. Oh, no.

Q. With the rights of any of those people to join any labor union?

A. Oh, no, I didn't instruct anybody to do anything, that is right.

Mr. Nicoson: May I have the answer stricken

(Testimony of Daniel P. O'Keefe.)

solely for the purpose of interposing the same objection I have made to all those questions?

Trial Examiner Kent: Read the answer.

(The answer was read.)

Mr. Collins: Is there a ruling?

Trial Examiner Kent: It may be stricken.

Q. (By Mr. Collins): Did you instruct any of your employees to restrain any of the other employees in their right to join a labor organization?

Mr. Nicoson: Same objection.

The Witness: Oh, pardon me. [1073]

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): Did you instruct any of your employees to coerce anybody either in or out of any labor organization?

Mr. Nicoson: Same objection, and for the further reason it has been asked and answered. He told you he didn't know what the word "coerce" meant.

Mr. Collins: Is there a ruling?

Trial Examiner Kent: He may answer.

The Witness: I am still a little vague what the word "coerce" means, so I think I would have to answer the same as before.

Q. (By Mr. Collins): You don't know the meaning of the word "coerce"? A. No.

Q. Did you instruct any of your employees to do anything at all to stop any of your employees from joining any labor organization?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: Just a minute, please. May I have that question read?

(The question was read.)

Mr. Nicoson: Thank you.

Mr. Collins: All right.

Q. (By Mr. Collins): You may answer.

A. I don't think so.

Q. During any of the time since November of 1942, up until [1074] this date, has the Department of Internal Revenue at any time, or any court, any Federal Court in the United States, at any time, requested the O'Keefe and Merritt Company to include in their return of profits the profits that were made for the Pioneer Electric Company?

A. No.

Q. Does the O'Keefe and Merritt Company carry workmen's compensation for the employees of the Pioneer Electric Company? A. No.

Q. Are any of the partners of the Pioneer Electric Company operating as your agents in the Pioneer Electric Company?

Mr. Nicoson: Objected to. That certainly calls for a legal conclusion, one which the witness isn't qualified to give. And further——

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Does the O'Keefe and Merritt Company have any secret interest in the Pioneer Electric Company?

Mr. Nicoson: Objected to as calling for a conclusion of the witness and invading the province of

(Testimony of Daniel P. O'Keefe.)

the Board; immaterial, irrelevant, and incompetent; for the further reason it is leading improperly.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Does the O'Keefe and Merritt Company have any interest in the Pioneer Electric Company?

Mr. Nicoson: That is objected to because it calls for a [1075] conclusion, legal conclusion, and invades the province of the Board, so far as the issues of this complaint are concerned.

Mr. Collins: I am sitting here trying to think of the simplest words I can use to find out if the O'Keefe and Merritt Company has a secret or undisclosed interest in the Pioneer Electric.

Mr. Tyre: The record will have to determine that.

Mr. Collins: That is exactly right. I want the record to have the man's——

Mr. Tyre: It is a conclusion of this witness. The record will speak for itself, what that interest is or is not.

Trial Examiner Kent: The answer to the question may be taken. Do you remember the question?

The Witness: Yes, I remember the question. The O'Keefe and Merritt Company have no interest in the Pioneer Electric Company.

Mr. Nicoson: Your Honor, I will submit that is an unfair question to put to the witness. I think by his own testimony it shows that O'Keefe and Merritt does have an interest in Pioneer Electric Company. They are interested in the Pioneer putting

(Testimony of Daniel P. O'Keefe.)

out stoves, so that O'Keefe and Merritt can sell them.

Of course they have an interest in Pioneer. I don't think Mr. O'Keefe understood the question and gave a proper answer.

The Witness: I assumed he meant a financial interest.

Mr. Nicoson: That is my objection. He didn't say anything [1076] about financial interest. He asked if they had any interest, and you said no.

Trial Examiner Kent: I think I read that into the question by implication.

Mr. Nicoson: Then I am not sure we are permitted to read things into the questions at this stage of the game.

Mr. Collins: That is all.

Trial Examiner Kent: Mr. Read, have you any questions? Or Mr. Tyre?

Mr. Tyre: Yes.

Mr. Reed No questions.

Cross-Examination

By Mr. Tyre: .

Q. I think you testified, Mr. O'Keefe, that you are now president and Mr. W. J. Boyle is vice-president, and Mr. R. J. Merritt is secretary-treasurer of O'Keefe and Merritt. How long have the three of you held those respective offices?

Mr. Collins: Objected to as a compound question.

The Witness: Well, I don't see any difference in guessing at it,—

(Testimony of Daniel P. O'Keefe.)

Trial Examiner Kent: The answer will be taken.

The Witness: —guessing with this attorney than it was with Mr. Nicoson. I had to guess with him on that same answer. If he was here he would have heard the answer. I am sure he did. [1077]

Q. (By Mr. Tyre): Answer the question.

A. I don't know. I made that clear.

Q. Have those people been officers the past year? A. Yes.

Q. Have they been officers for the past two years? A. Yes.

Q. Have they been officers for the past three years? A. Yes.

Q. More than five years? A. Yes.

Q. They have probably been officers since 1920?

A. No. [1078]

Q. When was the change made after 1920?

A. I told you I don't know.

Q. Have they been officers for the past 10 years?

A. I would have to look that up, before I can remember.

Q. At least you know they have been officers for more than five years? A. Yes.

Q. The board of directors you testified are R. J. Merritt, W. J. Boyle, Lucille Merritt, W. J. O'Keefe and Daniel P. O'Keefe. That is the present board of directors; is that right? A. Yes.

Q. Has that same group of people had office as the board of directors for the past five years, also?

A. I don't think so.

(Testimony of Daniel P. O'Keefe.)

Q. I asume—tell me if I am wrong—for the past five years R. J. Merritt, W. J. Boyle and Daniel P. O'Keefe have been members of the board of directors; is that correct? A. That is right.

Q. Can you tell us within the last five years whether Lucille Merritt and W. J. O'Keefe have become members of the board?

A. No, Lucille Merritt has been a member of the board for a long time.

Q. As long as you have? [1079]

A. I am not sure of that, but—

Q. For at least more than five years?

A. Yes.

Q. When did Mr. W. J. O'Keefe become a member of the board? A. I don't remember.

Q. Would that be more than two years, at least?

A. I think so.

Q. I show you Board's Exhibit 13, Mr. O'Keefe, which is a lease which has been made between Pioneer and O'Keefe on November 16, 1942. I ask you whether or not prior to 1946 your company entered into any other lease arrangement with the Pioneer Electric Company.

Mr. Nicoson: May I have that question read?

(The question was read.)

The Witness: This is '42. From '42 to '45?

Mr. Tyre: 1946.

Mr. Collins: Do you mean any lease or the renewal of a lease?

Mr. Tyre: Read the question.

(The question was read.)

(Testimony of Daniel P. O'Keefe.)

The Witness: I don't remember the date of the last lease, so I can't answer that.

Q. (By Mr. Tyre): You mean there are other leases besides what is now in evidence as Board's Exhibit 13? A. I think there are two. [1080]

Mr. Nicoson: The evidence so shows.

Q. (By Mr. Tyre): And the lease arrangement, that was made in 1946?

A. Was that '46? I don't remember whether it was or not. It was right around the first of the year. I can't remember whether it took place the last of December or around the first of January, or when.

Q. I show you Board's Exhibit 19. Is that the only other lease you know of that has been made between Pioneer and O'Keefe, this Board's Exhibit 13? A. Yes.

Q. Now, I think you stated that you had a number of subcontractors doing work for O'Keefe and Merritt before Pioneer Electric Company took on its subcontracting work. Were all of these other companies doing the same type of work that you gave to Pioneer Electric Company? A. No.

Q. Were any of them doing the same kind of work? A. Yes.

Q. Do you recall when you first gave any work to Pioneer Electric Company? A. No.

Q. Would that have been about the time that lease was made, that is, Board's Exhibit 13?

A. I don't remember that. [1081]

Q. Perhaps I can refresh your memory, Mr. O'Keefe. Board's Exhibit 14 is a certified copy of a

(Testimony of Daniel P. O'Keefe.)

Certificate of Business of a Fictitious Firm Name, namely Pioneer Electric Company, and dated August 15, 1942, and is filed October 15, 1942.

Now, after examining that document, does that refresh your memory as to when you first gave Pioneer Electric Company any subcontracting work?

Mr. Collins: Just a moment. Objected to as not tending to prove or disprove anything at issue in this case; immaterial. Objected to upon the further ground it is improper redirect.

Mr. Tyre: I haven't examined the witness yet, your Honor. As far as I am concerned, this is my first opportunity.

Mr. Collins: Mr. Trial Examiner, I object to counsel even interrogating any of the witnesses. I wish to renew the objection on the ground he doesn't represent anyone who is a party to these proceedings.

If he is permitted to cross-examine, I will renew my objection and insist we abide by the rules we started out with. Is he to assist the Board with redirect, I suppose it is to be—and certainly improper redirect?

Mr. Tyre: There has been considerable, your Honor, concerning the contracts between Pioneer and O'Keefe, concerning when the work began and when it didn't begin, and what that [1082] work was. These questions have been brought out sometimes by Mr. Nicoson and sometimes by Mr. Collins. I think there is a good deal of uncertainty in the rec-

(Testimony of Daniel P. O'Keefe.)

ord right now as to the questions I am putting to the witness.

Mr. Collins: Objected to on the ground, further, this witness is not the best person qualified to testify. If he wants more information on the subject, he should subpoena somebody from the Pioneer Electric Company.

Trial Examiner Kent: I think the inquiry is proper. You may proceed.

The Witness: Well, I don't think my answer would be worth anything, because I don't issue the purchase orders. I had nothing to do with placing the orders with this firm. I haven't the slightest idea when we started giving them work. Too many things have happened since August 1942 to remember whether we placed a small order with some little firm at that time or not, I assure you.

Q. (By Mr. Tyre): Well, to your best recollection, Mr. O'Keefe, as president of O'Keefe and Merritt for the past 29 years, I think according to your own testimony——

Mr. Collins: Objected to as assuming a fact not in evidence. According to his own testimony he has been president since 1928.

Q. (By Mr. Tyre): I asked you whether or not you can recall now if you gave Pioneer Electric Company its first order from [1083] O'Keefe and Merritt prior to or after October 1942.

Mr. Collins: Just a moment, Mr. O'Keefe. I object to that on the ground it assumes a fact not in evidence. This witness testified he has a purchasing

(Testimony of Daniel P. O'Keefe.)

department and purchasing agent. He doesn't remember the small orders, whether he gave them or not or when he gave them.

Mr. Tyre: I have asked him to testify as best he can himself recall, your Honor.

Trial Examiner Kent: He may answer that, if he can.

The Witness: I assure you I can't.

Q. (By Mr. Tyre): You have no idea, Mr. O'Keefe, have you, when you gave the first order to Pioneer Electric Company?

A. No. We probably have records in our purchasing department, which would be easy to ascertain the exact date. For me to guess would be, I think, out of line altogether.

Q. Do you know what kind of work Pioneer Electric Company was doing for O'Keefe and Merritt?

A. Yes.

Q. What were they doing?

A. That is, in a general way, they were doing the electrical work.

Q. All of the electrical work?

A. Did you say all of the electrical?

Q. Yes.

A. No. We had other concerns doing some.

Q. After you gave work, that is, this electrical work, to Pioneer Electric Company, isn't it true that you thereafter did not give that same type of work to any other subcontractor?

Mr. Collins: Objected to as assuming a fact not in evidence; improper redirect examination; doesn't

(Testimony of Daniel P. O'Keefe.)

tend to prove or disprove anything at issue in this case.

Mr. Nicoson: So the record doesn't reflect a false impression of my position, I don't concede it is redirect examination; and certainly I do not want this record to show that it is redirect examination, at least, by me.

I thought I made that clear at the beginning. This may not be a bad place to restate it. I represent the National Labor Relations Board, and that is all I represent. Mr. Purver and I are the only two attorneys here authorized to represent the National Labor Relations Board.

Since the Board called Mr. O'Keefe, the Board is the only one that can have redirect examination. I do not concede that Mr. Tyre's examination is redirect or binding upon me in any way.

Mr. Collins: If that is the position of the Board, I submit it is highly irregular and prejudicial and misconduct on the part of the Trial Examiner to permit an interloper and stranger to these proceedings to come in and cross-examine these witnesses.

Trial Examiner Kent: The thing I am apprehensive about is that I did rule Mr. Tyre could participate and bring out new matter or material to the issues that hadn't been inquired into by the Board in its direct examination, or could cross-examine in regard to new matter brought out by Mr. Collins, or clear up anything that might be considered patent ambiguities.

(Testimony of Daniel P. O'Keefe.)

I think the most of this inquiry was quite well covered by Mr. Nicoson.

Mr. Nicoson: Just a minute. Don't misunderstand my position. I am certainly not contending Mr. Tyre hasn't a right to examine these witnesses. All I am trying to say is that Mr. Tyre is not speaking for the National Labor Relations Board nor for me.

Trial Examiner Kent: That is true.

Mr. Nicoson: If I fail to do something one way or the other, that certainly shouldn't bind Mr. Tyre. If he fails to do something, It certainly is not going to bind me, as long as I have breath in my lungs to speak.

Trial Examiner Kent: Oh, no. The point I was making was I thought this line of inquiry had been covered fairly completely by you in your direct examination. I don't think we ought to have repetition. [1086]

Mr. Nicoson: My recollection of the testimony doesn't accord with your Honor. I don't think this particular wiring incident, or whatever he is inquiring into, was covered by me, at least in any detail.

Mr. Tyre: My notes agree with Mr. Nicoson. I agree we want to expedite this hearing. I don't want to go over a matter that has been thoroughly covered and on which we have thorough answers, believe me. My notes don't show this has been covered.

Trial Examiner Kent: I think the particular line will be brief. I think we will take up less time

(Testimony of Daniel P. O'Keefe.)

probably by permitting the inquiry by counsel and not having continuous argument.

Mr. Collins: I take it then the position of the Trial Examiner is now that the Board's attorney didn't cover the case adequately and he is now permitting Mr. Tyre to assist the Board.

Trial Examiner Kent: No. I don't say that. My recollection may very well be faulty. I thought that the Board had gone into these matters fairly exhaustively. What I am apprehensive about is we were getting repetitious matter into the record.

Mr. Tyre: I think there is a question pending.

Trial Examiner Kent: What is the question?

(The question was read.) [1087]

Trial Examiner Kent: You may answer that if you can.

The Witness: I can't give any dates. If I just had some of these questions written down, I could call up the office and get the dates we placed the purchase orders, when the purchase orders were made out and everything else. And I could expedite matters a good deal if I had in advance what was needed, but any dates I would give are purely guesswork and I don't want to go on record here as guessing.

Trial Examiner Kent: I wonder if we are not wandering off on a collateral issue. It may have some materiality, I don't know that I *don't* want to state flatly that it hasn't, but it is pretty remote, and I wonder if it is germane to the real issues raised by

(Testimony of Daniel P. O'Keefe.)

the allegations of the complaint. Unless counsel's purpose may be, of course, to test credibility.

Q. (By Mr. Tyre): Mr. O'Keefe, I think you testified, did you not, that one of the reasons why you decided to have the Pioneer Electric Company commence to do certain of your subcontracting work was because Mr. Durant told you that it would be cheaper for him to be close by where he could supervise that work and because the other subcontractors were charging too much money for that type of work. Wasn't that your testimony?

A. I think so. [1088]

Q. After you started Pioneer Electric Company and after Mr. Durant was in a position to become sort of a supervisor of what was going on there and keep his eye over the operations, after that, you did, did you not, discontinue subcontracting to other companies the type of work that you were giving the Pioneer Electric Company?

Mr. Collins: I object to that expression "after you started the Pioneer Electric Company," as assuming a fact that is not in evidence.

Mr. Tyre: All right, we will change it.

Mr. Collins: All right, we will change it so that it reads after Pioneer Electric Company was started.

The Witness: We still gave out some of the wiring work to Barcoe Manufacturing Company and it seems to me to—I think Bill would remember more, I think Littlejohn Electric, but I am not sure about

(Testimony of Daniel P. O'Keefe.)

that. I think there were several places that we had doing some electric work too.

Q. (By Mr. Tyre): After Pioneer Electric Company started to do your subcontracting, most of the other subcontracting you were giving to other companies was terminated, was it not?

A. Most of the electrical work, yes.

Q. I think you also testified that Mr. Ben Platz used to work for O'Keefe and Merritt and then he came back to work for Pioneer Electric Company after that company had been established, is that correct? [1089]

Mr. Collins: Just a moment. Objected to as having been asked and answered.

Mr. Tyre: I just asked him if that is what he testified to.

Mr. Collins: The record is the best evidence of what he testified to.

Mr. Tyre: To save time, your Honor, he could either answer it yes or no.

Mr. Collins: We can save time for three days by letting this attorney interrogate the witness unnecessarily.

Trial Examiner Kent: Is the challenge to the record? What was the testimony?

Mr. Tyre: I think that was the testimony. Will you stipulate that was what he testified.?

Mr. Collins: Yes, it was substantially that.

Mr. Tyre: Fine.

Q. (By Mr. Tyre): Now, how long, Mr.

(Testimony of Daniel P. O'Keefe.)

O'Keefe, had Mr. Platz been employed by O'Keefe and Merritt?

A. I don't know.

Q. Well, would it have been more than five years or less than five years?

Mr. Collins: Objected to as not tending to prove or disprove anything at issue in this case. Platz could have worked for 50 different concerns. I fail to see the remotest relevancy of this type of interrogation.

Mr. Tyre: I think it has considerable relevancy, your Honor.

Trial Examiner Kent: Is he one of the group of the Pioneer Electric?

Mr. Tyre: He is one of the group that set up the Pioneer Electric Company.

Mr. Collins: Just a moment, if your Honor please. I submit that statement is not supported by any testimony in this case, that Mr. Ben Platz was one of the group that set up the Pioneer Electric Company. The evidence is that it is a co-partnership and is composed of a man by the name of O'Keefe, Willis Boyle, Lew Boyle, and nowhere in any of the records does the name of Ben Platz appear, and I state that it is highly prejudicial misconduct on the part of the Trial Examiner to permit this counsel, who is representing no one here except himself, to interrogate this witness.

Trial Examiner Kent: By the way, that raises another point, another question in my mind. The Pioneer Electric is mentioned as a co-partnership

(Testimony of Daniel P. O'Keefe.)

in the complaint, and you have just stated it was a co-partnership. The California law may vary, I am familiar with what is a co-partnership elsewhere, people can be doing business under an assumed name and not be necessarily a co-partnership, or the relationship between the parties doing business under an assumed name may not be those of partners. The California law may be different, or I thought it might be.

Mr. Nicoson: Your Honor, I had in my possession until just a second ago a series of three articles of co-partnership. Some time during the course of this hearing either I or Mr. Collins intends to put them in.

Mr. Collins: I will stipulate that the articles of co-partnership may go into evidence at this time.

Trial Examiner Kent: No, if the formal documents are coming in, that will answer my inquiry, but some of the exhibits now just raised the question in my mind, and I thought this was the time to mention that. Well, you may proceed, then.

The Witness: What was the question?

Mr. Tyre: To save time, I will restate it.

Q. (By Mr. Tyre): Had Mr. Ben Platz worked for O'Keefe and Merritt Company more than five years prior to the time he terminated his employment there.

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence. The testimony was that Mr. Platz had been working he thought for

(Testimony of Daniel P. O'Keefe.)

some other company prior to the date he went to work for the Pioneer Electric. The testimony of this witness was that Mr. Platz had worked for O'Keefe and Merritt, he thought, at some time or other for a while prior to the forming of this Pioneer Electric Company.

Mr. Tyre: That doesn't interfere with my question at all, your Honor. If the reporter will read it, you will see that. [1092]

Trial Examiner Kent: Read the question.

(Question read.)

A. I don't know.

Q. (By Mr. Tyre): Had he been working there for more than two years?

A. Oh, yes, he had worked more than two years.

Q. Now, I think you testified that the Pioneer Electric Company was formed and he went to work for that company, is that right?

Mr. Collins: Just a moment. Objected to as assuming *a not* in evidence. This witness is not an employee, officer or agent of the Pioneer Electric Company. Interrogating him as to the internal affairs of Pioneer Electric Company is highly irregular. He is not qualified to testify. It is not the best evidence.

Mr. Tyre: There has been considerable examination, your Honor, of this witness, as to the formation and other structure of the Pioneer Electric Company. I don't see what would debar me from asking the same kind of questions the other counsel have asked.

(Testimony of Daniel P. O'Keefe.)

Mr. Collins: I submit, Mr. Examiner, there has been no examination of this witness as to the formation of the Pioneer Electric Company. It has been entirely limited to the lease. [1093]

Trial Examiner Kent: Yes, my recollection was if there was any inquiry it was sort of collateral to the matters concerning the lease and the agreements.

Mr. Tyre: As a matter of fact, your Honor, the name of Ben Platz was even used by this witness, and he was asked whether or not Ben Platz did not work for the Pioneer Electric Company. I am trying to find out when now, your Honor, so that can be clarified.

Trial Examiner Kent: You might save time by taking the answer.

The Witness: You surely know in advance that I don't know dates, or I haven't the slightest idea. You should know that, I mean I am not sure of the date, and I would be just guessing at it.

Mr. Tyre: Will you read back the question so the witness can answer instead of arguing with counsel.

(Question read.)

A. Yes. I don't know, that is, whether he went to work when they started or not, but he was there shortly after they started.

Q. (By Mr. Tyre): And Mr. Ben Platz was terminated from Pioneer Electric Company around V-J Day, is that right?

A. I don't know.

(Testimony of Daniel P. O'Keefe.)

Q. What relation, Mr. O'Keefe, is Evelyn B. Boyle to Willis M. Boyle or W. J. Boyle?

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence.

Mr. Tyre: If she is related at all.

The Witness: Evelyn Boyle, did you say?

Q. (By Mr. Tyre): Evelyn D. Boyle.

A. Evelyn Boyle, to which Boyle?

Q. To any of the Boyles, W. J. Boyle or Lewis Boyle. Let me put Board's Exhibit 22 before you. It might help you refresh your memory.

Mr. Collins: Objected to upon the ground it does not tend to prove or disprove anything at issue in this case. Is it the contention of the attorney now interrogating this witness that because these people are related they can't go into business for themselves? If that is the purpose of this interrogation, it is certainly going far afield and would be contrary to any known principle of law which has been taught over a thousand years, that you cannot be related and still have a separate business.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, I am not very well acquainted with Evelyn Boyle, but she is either Lew Boyle's wife or daughter. I think it is the wife.

Q. (By Mr. Tyre): What is the relationship, if any, of Blanche Boyle?

A. Blanche Boyle is the wife of W. J. Boyle.

Q. What is the relationship, if any, of John E. Boyle?

A. John E.?

(Testimony of Daniel P. O'Keefe.)

Q. That is the last one.

A. I guess that is the fellow that I know as Jack. He is the son of W. J. Boyle.

Q. Now, as a matter of fact, Mr. O'Keefe, Lewis Boyle has never been actively engaged in the business of the Pioneer Electric Company, has he?

Mr. Collins: Just a moment. Objected to as assuming a fact not in evidence, and objected to upon the further ground it is not the best evidence. This witness is not qualified to testify what happened at the Pioneer Electric Company.

Mr. Tyre. All he has to do is testify if he knows.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Tyre): Do you know whether or not Lewis M. Boyle has been active in the Pioneer Electric Company from the time it started up to date?

A. I had nothing at all to do with the Pioneer Electric Company. I never saw their books nor had anything to do with it in any way, and if he was not active, I wouldn't know it. I wouldn't have had anything to do with it.

Q. Mr. O'Keefe, the record shows that an election took place at your plant on November 20th, 1945, which was a Tuesday. I think you have already testified that you gave a speech about that time. Do you recall whether or not that speech was given at noontime? [1096]

A. I believe it was.

Q. That was on the same day of the election, was it not? A. I don't remember.

(Testimony of Daniel P. O'Keefe.)

Q. It might have been?

A. It might have been.

Q. What is Mr. L. G. Mitchell's position now with O'Keefe and Merritt?

A. I guess you are trying to test my memory or see if I was telling the truth yesterday. He is still auditor today.

Mr. Garrett: Is he the one that played the stock market?

The Witness: Yes.

Q. (By Mr. Tyre): You don't know of your own knowledge, do you, Mr. O'Keefe, exactly how many employees there were on the payroll of the Pioneer Electric Company on November 20, 1945, do you?

Mr. Collins: Objected to as having been asked and answered.

Mr. Tyre: No, I don't think it has, your Honor.

Trial Examiner Kent: Wasn't it stipulated?

Mr. Collins: It was stipulated it was 180 as of November 20th. The evidence of the witness was that they had some employees, but he didn't know how many. [1097]

Mr. Tyre: And I think he was testifying to something he said he was not sure about, and I am asking him of his own knowledge does he know whether or not Pioneer Electric Company had any employees on November 20, 1945.

Trial Examiner Kent: You may answer.

The Witness: Yes, I saw employees around

(Testimony of Daniel P. O'Keefe.)

there who I am sure were working for Pioneer Electric.

Q. (By Mr. Tyre): But you don't know of your own knowledge whether or not——

A. No, I had nothing at all to do with them. Whether they were on the payroll or not I wouldn't know.

Mr. Tyre: That is all.

Mr. Collins: Is that all?

Mr. Garrett: No questions.

Mr. Collins: Mr. O'Keefe, this lease that they have identified here——

Mr. Nicoson: I would like to ask him three or four questions. Shall I ask him first?

Mr. Collins: Yes.

Redirect Examination

By Mr. Nicoson:

Q. Now, Mr. O'Keefe, in your cross-examination by Mr. Collins, I believe it was, you mentioned Bucknell. Who is Bucknell?

A. He is an engineer, electrical engineer.

Q. Do you know his first name, given name?

A. No. They call him Buck. I don't know what his name is.

Q. Was it your testimony that he was working for the Pioneer Electric Company?

A. Yes, he is working for Pioneer Electric, yes.

Mr. Collins: His first name is Wilson.

Mr. Nicoson: Wilson?

Mr. Collins: Wilson is his first name.

(Testimony of Daniel P. O'Keefe.)

Q. (By Mr. Nicoson): Also I think you testified to the question of Mr. Collins that after V-J Day Pioneer laid off some of its employees, you didn't know how many. I will ask you if O'Keefe and Merritt absorbed any of those employees, if you know.

A. I wouldn't know.

Q. At the time of entering into the second lease with Pioneer, which is in evidence as Board's Exhibit 19 and which I show you, was any of this electrical wiring being done within the confines of the O'Keefe and Merritt plant at that time?

A. When?

Q. At the time you entered into this last lease.

A. I don't know whether it was on that particular day. You mean since then or what?

Q. At or about that time.

A. Oh, from then on, they are still at it, yes, they are still doing it now. [1099]

Q. Was that in connection with the generators or was it in connection with the production of some other—

A. In connection with generators.

Q. They are still producing some generators, is that right?

A. Yes.

Trial Examiner Kent: That wiring you talk about, I suppose is winding armatures and fields of generators?

The Witness: Yes, that is it, yes.

Q. (By Mr. Nicoson): You stated, I believe,

(Testimony of Daniel P. O'Keefe.)

that O'Keefe and Merritt now has employees. Will you state for the record what the jobs are with relation to what work they do? Is that question clear to you?

A. That is clear. I would like to suggest that a witness who will be following me can answer that very much better than I can. I can only answer what I think is true, and I know that Fred Rotter, that is his job, and he will be able to answer it correctly and I am only guessing.

Q. Thank you, sir. With respect to those three talks or speeches which are in evidence and on which you were asked by Mr. Tyre a moment ago as to whether or not that occurred at noon, I will ask you whether or not it is not a fact they occurred directly after the lunch period? [1100]

A. I don't remember.

Q. Is it your recollection that they occurred during the lunch period? [1100]

A. I don't remember whether it was during the lunch period. It was around noon, but I don't know whether it was the lunch period or before or after. It was right around noon.

Q. Then you are not in a position to state. Do you know what the lunch period is for the men out there at O'Keefe and Merritt, at the time you made the speeches?

A. I am not sure whether we had two periods or just one period then or not. We had at one time 11:30 to 12:00 and 12:00 to 12:30, a staggered lunch period, so as to keep the lunch stand from being

(Testimony of Daniel P. O'Keefe.)

crowded. Whether it was in effect at that time or not I don't remember.

Q. If I may, Mr. O'Keefe, go back to this wiring business that I asked you about before, the wiring that was done there, was that wiring, at least the wiring we are talking about, was that on orders that you already had or were they new orders for generators?

Mr. Collins: I object to the question as not clear now, Mr. Nicoson.

Q. (By Mr. Nicoson): Do you understand what I mean?

A. No. At what particular time?

Mr. Collins: That is what I mean.

Mr. Nicoson: Yes.

Q. (By Mr. Nicoson): I asked you, as I recall, at the time you entered into the second lease with the Pioneer if you were still doing any wiring and you said you were doing some. Is that about a fair statement of your testimony?

A. The second lease that we were doing some?

Q. Yes.

A. Yes. If I did, that was a mistake.

Q. Well, all right. Was Pioneer doing some?

A. Yes, I would say they were.

Q. Now, that work is that? I mean, was that on some left-over orders or was it on some new orders? I mean by that, was that part of the subcontract or rather as the result of the relation between O'Keefe and Merritt and Pioneer which originally happened when you had the lease agreement and so forth?

(Testimony of Daniel P. O'Keefe.)

A. I think I can clear that up with what I told you this morning. That wiring is all done on material that Pioneer purchased through us from the Signal Corps.

Q. I see, and they are completing that job?

A. They are completing those units and selling them, yes.

Q. Prior to January 2nd, 1946, that is the time you entered into the second agreement with Pioneer, did you have some arrangement for workmen's compensation for the O'Keefe and Merritt employees, is that right?

A. We carry our own, if that is what you mean.

Q. And what happened to that workmen's compensation carriage after the lease was entered into on January 2nd, 1946, if you know? [1102]

Mr. Collins: Mr. Nicoson, maybe I can clear up the situation by a statement. I offer to stipulate that O'Keefe and Merritt Company is a self assurer in the State of California by consent of the Industrial Accident Commission, having on file with the Secretary of State or Treasurer a bond in the amount of I believe \$40,000.00. I will also offer to stipulate that the Pioneer Electric Company has a policy of insurance from an insurance carrier, which policy I have with me and I will stipulate it in evidence if you care to have it.

Mr. Nicoson: I think I can accept your statement, but what I am interested in is what happened to it after January 2nd.

Mr. Collins: What happened to what?

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: O'Keefe and Merritt's carriage and bond and so forth.

The Witness: I can easily answer that. The bond remains up there indefinitely, and whether we have 50 employees or 500, that is the only expense involved. We have our own little hospital there and so forth, so nothing happens to it at all. It just goes on.

Q. (By Mr. Nicoson): It remains the same?

A. Yes.

Q. When did Pioneer start making gas appliances, if it did?

A. Well, it isn't—when you say make, I don't know just what that word means. You know, we usually use the word make when you have completed something and it is ready for sale. But if you mean when they began fabricating—I mean there are so many different—— [1104]

Mr. Nicoson: I will take fabricating.

The Witness: Well, I would say it seems to me it was February 4th, as I recall.

Q. (By Mr. Nicoson): And at that time O'Keefe and Merritt—if this is correct, you may answer yes, and if it is not, you will correct me—at that time O'Keefe and Merritt had some unfinished jobs on gas appliances and stoves and so forth on the floor, did it not?

A. I don't know whether we had unfinished. We had some work started, I would say.

Q. And Pioneer just stepped in and started and finished that work up?

A. That is right.

Mr. Nicoson: That is all.

(Testimony of Daniel P. O'Keefe.)

Recross-Examination

By Mr. Collins:

Q. Mr. O'Keefe, Pioneer Electric Company's lease, which is in evidence, provides for cost plus, isn't that true, as the term is generally used?

A. I think so.

Q. So it doesn't make any difference whether there was work in progress or not, whatever they did there in the line of work they are paid for on the cost plus basis?

A. That is right.

Q. When you said a moment ago that you now had your bond and your policy up, you didn't mean by that, did you, that the Pioneer Electric Company's employees are being covered by the O'Keefe and Merritt self-insurance bond? [1105]

A. No, I think you explained it afterwards and said the policy they had.

Q. I wanted the record very clearly to show that the policies are entirely separate.

A. Well, the self-insurance policy could not, to my understanding, cover any other employees than those who are working for us.

Q. And that is the situation as of today?

A. Yes.

Q. I don't know whether you know this or not, but I will ask this question, and I have here the policy under which the Pioneer Electric Company's employees are covers, and the broker's name is J. E. Schrober.

A. No.

(Testimony of Daniel P. O'Keefe.)

Q. Those generators that you mentioned a while ago, all of the work on the generators is now being done by Pioneer Company, is it not?

A. Yes, the press work and everything else, that is stamping the stators and all the rest of it.

Q. At the time that you testified that you believed that some of the employees of the Pioneer Electric Company were laid off, there were also a great number of employees of the O'Keefe and Merritt Company laid off at the same time, isn't that the case? [1106]

A. I would imagine approximately the same time, yes.

Q. Now, with respect to this testimony concerning Ben Platz, I don't know whether the record is clear on that or not. Had Ben Platz worked for the O'Keefe and Merritt Company within a year immediately prior to that date that you executed this first lease with the Pioneer?

A. I don't know.

Q. Are you acquainted with the fact that Ben Platz went out and went in business for himself building water wells after he quit working for O'Keefe and Merritt?

A. No, I understand he was with a certified accountant firm.

Q. Well, he wasn't working for O'Keefe and Merritt, as you recall prior?

A. No.

Q. Does Ben Platz work for you now, O'Keefe and Merritt Company?

A. No.

(Testimony of Daniel P. O'Keefe.)

Mr. Nicoson: You are not trying to impeach my witness, are you, Mr. Collins? He testified yesterday he was working for a C.P.A. That is what he said.

Q. (By Mr. Collins): You stated, as I recall, a moment ago, that some of the work was given to Vardeo Company after the Pioneer Electric went into business. Was that the same type of work that the Pioneer Electric Company was doing?

A. Yes; wiring stators.

Q. Was it work that the Pioneer Electric Company wanted to accept?

A. I don't know.

Q. Was it the policy of the United States Government to have various suppliers have all the different parts during the war, as communicated to you?

Mr. Nicoson: Various what, appliers?

Mr. Collins: Suppliers. S-u-p-p-l-i-e-r-s.

The Witness: Well, I understand it was, yes.

Q. (By Mr. Collins): As it was communicated to you, they advised you in the event of bombing and so on they wanted different suppliers to have these parts ready; isn't that the case?

A. Well, I don't remember the bombing or anything. But we had a certain length of time to get it out. I don't know just why we farmed some of it out to Vardeo and, I think, to the other firms, whether the Pioneer was too busy or behind with their work or just what reason.

Q. Just the ordinary conduct of your business?

A. That is right.

(Testimony of Daniel P. O'Keefe.)

Q. Now, this lease, this first lease you have identified here, the one that was executed on November 15, 1942, carries the provision in it that it shall run for a term of one year from the 16th day of November, 1942, at a rental of \$500.00 per month. At the end of the first year, did you stop collecting rent from them, or what happened? [1108]

A. No.

Q. What happened after the end of that first year?

A. They stayed on and paid rent. There was nobody——

Q. Month to month tenancy from then on; is that the case?

Mr. Nicoson: Objected to as calling for a legal conclusion of the witness.

Mr. Tyre: Also leading.

Q. (By Mr. Collins): I will ask you, did you tell them to get out? A. No.

Q. Did you receive your regular monthly rent from them? A. Yes.

Mr. Collins: That is all.

Mr. Nicoson: No further questions.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Trial Examiner Kent: We might take a five-minute recess at this time.

Mr. Collins: May this witness be excused, subject to being recalled for redirect on behalf of the respondent's case in chief, in the event it is necessary to have him back?

Mr. Nicoson: Not on redirect.

Mr. Collins: The further respondent's case in chief.

Trial Examiner Kent: Yes, you can bring him back if you wish.

(A short recess was taken.)

Trial Examiner Kent: We might proceed.

Mr. Nicoson: Mr. Rotter, please.

FRED F. ROTTER,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Will you state your name for the record, Mr. Rotter, please?

A. Fred F. Rotter.

Q. Your business or occupation?

A. Personnel manager, Pioneer Electric.

Q. On November 20, 1945, what was your business or occupation?

A. Personnel manager of O'Keefe and Merritt Company.

Q. Were you also personnel manager of O'Keefe and Merritt Company on November 5, 1945?

A. Yes.

Q. And on November 13th and 14th; is that correct? A. Yes. [1110]

Mr. Nicoson: Please mark this as Board's Exhibit 12-B and show this as 12-A.

(Testimony of Fred F. Rotter.)

(The documents referred to were marked as Board's Exhibits 12-A and 12-B, for identification.)

Mr. Nicoson: Let the record show that previously, during the testimony of the Witness Spallino, I had marked for identification as Board's Exhibit 12 what I thought I would be able to show was the payroll list and also poll list used in the election; and that during the examination of Mr. Spallino, when it appeared that he didn't check but only part of the document which at that time was more than four pages, I amended my offer at that time to include only four pages which I had shown the witness.

I have now, for further identification, had that portion of it marked Board's Exhibit 12-A. I have also had the remaining portion marked Board's Exhibit 12-B.

Q. (By Mr. Nicoson): I show you, Mr. Rotter, Board's Exhibit 12-A and Board's Exhibit 12-B, and ask you to examine them and state, if you know, what they are.

A. Lists of the employees of O'Keefe and Merritt Company payroll, as of some time in October or November.

Q. I show you a document which is in evidence as Board's Exhibit 4, and direct your attention to the portion where it says, "payroll period for eligibility November 4, 1945." Was this document prepared in accordance with that date, do you know?

A. November 4th?

Q. Yes. A. Yes. [1111]

(Testimony of Fred F. Rotter.)

Q. I think you testified this was, or if you didn't, please do, this was taken from the payroll list of O'Keefe and Merritt for that period?

A. That is right.

Q. Under your supervision and direction; is that correct? A. Yes.

Q. Now, I will call your attention to the very last page of the document marked Board's Exhibit 12-B, to some handwriting there in pencil. None of that was on it at the time you submitted the payroll list to the Board; is that correct?

A. That is correct; no writing on it.

Q. Also, that is true as to the red marks you see on Board's Exhibit 12-B and with respect to the blue marks on Board's Exhibit 12-A?

A. That is correct.

Mr. Nicoson: I now offer both Board's Exhibits 12-A and 12-B in evidence.

Trial Examiner Kent: They may be admitted.

(The documents heretofore marked as Board's Exhibits Nos. 12-A and 12-B, for identification, were received in evidence.)

[Board's Exhibits 12-A and 12-B set forth on pages 1694 to 1703.]

Mr. Nicoson: Please mark these documents for identification.

(The documents referred to were marked as Board's Exhibits Nos. 23 and 24, for identification.)

(Testimony of Fred F. Rotter.)

Q. (By Mr. Nicoson): I show you another document, which, for the purpose of identification, has been marked Board's Exhibit 23, and ask you to look at it and examine it and state, if you know, what it is.

A. Notice from the National Labor Relations Board to the effect where posters pertaining to an election shall be posted.

Q. And the places where the notice was posted; is that correct?

A. That is right.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit 24, and ask you to examine it and state if that isn't a notice or copy of notice which you referred to in Board's 23?

A. That is a copy.

Q. And also, on Board's Exhibit 23, that is your signature where it says "F. F. Rotter"; is that correct?

A. That is right.

Q. And these are the notices that you posted in those six places referred to in Board's Exhibit 23?

A. Yes.

Mr. Nicoson: I ask that both Board's Exhibits 23 and 24 be put in evidence, and show them to the parties. [1113]

Trial Examiner Kent: They may be received.

(The documents heretofore marked as Board's Exhibits Nos. 23 and 24, for identification, were received in evidence.)

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 23

AFFIDAVIT OF POSTING

To: National Labor Relations Board

Twenty-first Region

111 W. 7th St., Board of Trade Building

Los Angeles, California

In re: O'Keefe & Merritt Company

Case No. 21-R-3101

The undersigned hereby states that Notices of Election in the above-entitled matter were posted personally by him in the following places on the 16th day of November, 1945.

1. Shipping Department
2. Refrigeration-Service Repair Department
3. Enamel Department
4. Tool Room and Press Department
5. Foundry Department
6. At main time clock in Entrance and Exit aisle.

/s/ F. F. ROTTER

/s/ J. K. SLOAN,

Witness.

[Endorsed]: Received Nov. 19, 1945.

[Endorsed]: Filed March 21, 1946.

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 24

21-R-3101

United States of America
National Labor Relations Board

NOTICE OF ELECTION

Rights of Employees

Under Section 7 of the National Labor Relations Act, employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Purpose of Election

An election by secret ballot will be conducted under the supervision of the undersigned Regional Director of the National Labor Relations Board among the eligible voters described herein to determine the representative, if any, desired by them, for the purpose of collective bargaining with their employer.

Secret Ballot

The election will be by secret ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the elec-

(Testimony of Fred F. Rotter.)

tion. Your attention is called to Section 12 of the National Labor Relations Act:

Any person who shall willfully resist, prevent, impede or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

An agent of the Board will hand a ballot to each eligible voter at the voting place. The voter will then mark the ballot in secret in a voting booth and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an agent of the Board. A majority of the valid ballots cast will determine the results of the election.

Incorporated herein for your information only is a copy of the official ballot.

Authorized Observers

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or his agent in charge of the election. These observers will (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the Regional Director or his agent.

Eligibility Rules

Employees described under Voting Unit in this

(Testimony of Fred F. Rotter.)

Notice of Election who did not work during the designated pay-roll period because they were ill or on vacation or temporarily laid off, and employees in the Armed Forces of the United States who present themselves in person at the polls, shall be eligible to vote. Employees who have quit or been discharged for cause since the designated pay-roll period, and who have not been rehired or reinstated prior to the date of the election, shall not be eligible to vote.

Voting Unit

All production and maintenance employees, who were in the employ of the Company during the pay-roll period ending November 4, 1945, excluding office clerical employees, guards, parcel post clerks, draftsmen, timekeepers, material expeditors, pattern-makers and pattern-maker helpers other than those working in sheet metal, experimental laboratory workers, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

Time and Place of Election

On Tuesday, November 20, 1945, between the hours 4:30 p.m. and 5:30 p.m. at the Employee Entrance by Time Clocks.

United States of America
National Labor Relations Board
Official Secret Ballot
O'Keefe & Merritt Company

(Testimony of Fred F. Rotter.)

This ballot is to determine the collective bargaining representative, if any, for the unit in which you are employed.

If you spoil this ballot, return it to the Board Agent for a new one.

Mark an "X" in the square of your choice.

United Steelworkers of America, Stove Division Local 1981, C.I.O. ☐

Neither ☐

Los Angeles Metal Trades Council, A.F.L. ☐

Do not sign this ballot. Fold and drop in ballot box.

(Sample)

STEWART MEACHAM,
Regional Director.

[Endorsed]: Filed March 21, 1946.

Q. (By Mr. Nicoson): Now, is it also true, Mr. Rotter, that during the election you acted as one of the talliers of the ballots?

A. Tally checker.

Q. I show you a document which, for the purposes of identification, has been marked Board's Exhibit 5, and I will ask you to state, if you ever saw that document before. A. I did.

Q. Where did you first see the document?

A. On the evening of November 20th, after the election.

Q. Is it correct to say that document was pre-

(Testimony of Fred F. Rotter.)

pared by Mrs. Bernice Phoenix of the National Labor Relations Board? A. That is correct.

Q. And a copy of it was given to you?

A. That is right.

Q. That is your signature appearing on there under the name of O'Keefe and Merritt Company; is that correct? A. That is right.

Q. And under the name "Los Angeles Metal Trades Council" appears what appears to be the signature of H. B. McMurray. Was that put on there about the same time yours was, in [1114] your presence? A. Yes.

Q. And under the "United Steelworkers of America, Stove Division 1981," appears the signature of G. J. Conway. Was that put on about the same time? A. That is right. [1115]

Mr. Nicoson: I offer in evidence Board's Exhibit 5.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 5, for identification, was received in evidence.)

(Testimony of Fred F. Rotter.)

BOARD'S EXHIBIT No. 5

United States of America
National Labor Relations Board

Case No. 21-R-3101

Date issued Nov. 20, 1945

In the Matter of
O'KEEFE & MERRITT COMPANY
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 341
2. Void ballots 2
3. Votes case for.....
4. Votes cast for United Steelworkers of
America, Stove Division Local 1981
C.I.O.177
5. Votes cast for Los Angeles Metal Trades
Council, A.F.L.....114
6. Votes cast against participating labor or-
ganization(s) 5
7. Valid votes counted (sum of 3, 4, 5,
and 6).....296
8. Challenged ballotsNone

(Testimony of Fred F. Rotter.)

9. Valid votes counted plus challenged ballots (sum of 7 and 8).....296
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes has (~~not~~) been cast for United Steelworkers of America Stove Division Local 1981, C.I.O.
- /s/ BERNICE T. PHOENIX,
For the Regional Director.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

/s/ F. F. ROTTER,
For O'Keefe & Merritt
Company.

/s/ H. B. M. MURRY,
For Los Angeles Metal
Trades Council, A.F.L.

/s/ G. J. CONWAY,
For United Steelworkers of
America, Stove Division
Local 1981, C.I.O.

Instructions to Board Agent Preparing
Tally of Ballot
Items 1-9

Items 1 to 9, inclusive, are self-explanatory, and

(Testimony of Fred F. Rotter.)

appropriate insertions should first be made in these items.

Items 10-11

If the number of votes cast for one of the participating labor organizations (items 3, 4, or 5) is a majority of the "Valid votes counted plus challenged ballots" (item 9), strike the word "(not)" in item 11 and write in the name of the organization on the blank line there provided.

In a single union election (Yes-No ballot), if the "Votes cast against the participating labor organization" (item 6) is a majority of the "Valid votes counted plus challenged ballots" (item 9), write in the name of the participating organization on the labor organizations" on the blank line in item 11.

In a multiple union election, if the number of "Votes cast against participating labor organizations" (item 6) is a majority of the "Valid votes counted plus challenged ballots" (item 9), write in the words "any (or either) of the participating labor organizations" on the blank line in item 11.

If no choice offered on the ballot received a majority of the "Valid votes counted plus challenged ballots" (item 9), but if the number of votes cast for the highest choice (including the no union choice) is a majority of "Valid votes counted" (item 7), it will be necessary to rule on the challenged ballots and subsequently issue a Revised Tally of Ballots. In this event, strike the word "(not)" in item 10 and strike the whole of item 11.

(Testimony of Fred F. Rotter.)

Be sure that all copies of the tally of ballots are dated and signed.

[Endorsed]: Filed March 13, 1946.

Q. (By Mr. Nicoson): I show you another document which has been marked for identification as Board's Exhibit 6, and ask you to state if there-after directly after the election, that is, within two or three days, if you did not receive a copy of that in the United States mail from the Board?

A. We did.

Mr. Nicoson: I offer this in evidence, Board's Exhibit 6.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 6, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 6

United States of America
National Labor Relations Board

Case No. 21 R 3101

In the Matter of
O'KEEFE & MERRITT COMPANY
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION LOCAL 1981, C.I.O.

(Testimony of Fred F. Rotter.)

CONSENT DETERMINATION OF
REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the ballot.

A majority of the valid votes have been cast for the Union indicated below. Pursuant to Section 8 of the Agreement for Consent Election the undersigned hereby finds and determines that United Steelworkers of America, Stove Division Local 1981, C.I.O., is the exclusive representative of all the employees in the unit defined in Section 2 of the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, this 28th day of November, 1945.

/s/ STEWART MEACHAM,

Regional Director, National
Labor Relations Board.

[Endorsed]: Filed March 13, 1946.

(Testimony of Fred F. Rotter.)

Q. (By Mr. Nicoson): Mr. Rotter, we have had some testimony here about the employees of O'Keefe and Merritt, as of the present time, and particularly between the present time and after February 4, 1946. Were you acquainted with the number of employees that O'Keefe and Merritt has now and did have during that period?

A. Not the specific number.

Q. Could you give us the approximate amount?

A. 35 to 40. [1116]

Q. Can you give us the type of those employees, that is, what they do, classifications?

A. What they are doing now?

Q. Yes.

A. Specifically I could not; other than continuing in their employment, they had as of the latter part of January.

Q. Can you state, Mr. Rotter, were any of those employees now in the employ of O'Keefe and Merritt performing any manufacturing operation?

A. There are none, to my knowledge.

Q. Is it correct to say that those employees are engaged in clerical and service work, those employees of O'Keefe and Merritt, at the present time?

Mr. Collins: Mr. Nicoson, I may be able to shorten it by stipulation. I am willing to try. I will stipulate that O'Keefe and Merritt employees are now engaged in office, clerical, service, shipping and sales, and new construction. There might be one or two other employees possibly doing some

(Testimony of Fred F. Rotter.)

building maintenance, I am not certain. Generally speaking, that is the situation.

Mr. Nicoson: I accept that stipulation. No further questions.

Mr. Tyre: No questions.

Cross-Examination

By Mr. Collins:

Q. This list you have just identified, [1117] Mr. Rotter, as having been the list of those who participated in the Board-conducted election, were there any employees of the Pioneer Electric Company on that list? A. No.

Mr. Collins: No further questions.

Mr. Nicoson: I would like to ask another question, just to complete the record.

Redirect Examination

By Mr. Nicoson:

Q. You testified at the beginning that you were now personnel manager for Pioneer Electric Company; is that correct? A. Yes.

Q. When did you so become?

A. As of February 4, 1946.

Q. Prior to that time you had been for O'Keefe and Merritt personnel manager? A. Yes.

Q. For how long?

A. Anywhere from four to five, to eight years.

Mr. Nicoson: That is all.

Mr. Collins: Mr. Rotter, in your duties as personnel manager, you have nothing to do with any of the help except that in the factory; isn't that true?

The Witness: That is right.

(Testimony of Fred F. Rotter.)

Mr. Collins: So your duties are substantially the same [1118] for the new company as they were for the prior employer?

The Witness: Yes.

Mr. Nicoson: No further questions.

Mr. Collins: Nothing further.

(Witness excused.)

Mr. Nicoson: I think I ought to tell Mr. Garrett what I did while he was out. I started before I knew he was gone. I want to let him know what happened.

Mr. Garrett: Exhibits 23 and 24?

Mr. Nicoson: I got more than that in. I got in Board's Exhibits 5 and 6.

Will you please mark this for identification?

(Thereupon, the document referred to was marked as Board's Exhibit No 25, for identification.)

Mr. Nicoson: Mr. Rotter, will you take the stand again?

FRED ROTTER

a witness called by and on behalf of the National Labor Relations Board, having been previously sworn, was recalled and testified further as follows:

Direct Examination

By Mr. Nicoson:

Q. I show you another document, Mr. Rotter, which has been marked for identification as Board's Exhibit 25, and I ask you to examine it and state, if you know, what it is.

(Testimony of Fred F. Rotter.)

A. A designation of representatives to receive tally of [1119] ballot.

Q. Did those two men, McNinch——

A. Assisted in the tallying of the ballots.

Q. ——McNinch and McArthur assist in the tallying of the ballots? A. Yes.

Q. And did they also act as observers for the company? A. That is right.

Mr. Nicoson: I show this to the parties and offer it as Board's Exhibit 25.

Trial Examiner Kent: Board's Exhibit 25 may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 25, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 25
DESIGNATION OF REPRESENTATIVE TO
RECEIVE TALLY OF BALLOTS
In the Matter of O'Keefe & Merritt Company. 21-R-3101.

The undersigned designates

1. Civilin Guy McNinch
2. Charles McArthur

to accept service of a copy of the Tally of Ballots at the polling place.

O'KEEFE & MERRITT
COMPANY

By /s/ F. F. ROTTER,

Personnel Manager.

[Endorsed]: Date November 16, 1945.

[Endorsed]: Filed March 22, 1946.

(Witness excused.)

Mr. Garrett: Recall Mr. Spallino. He hasn't been submitted to cross-examination by myself since his redirect.

Trial Examiner Kent: Very well.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously sworn, was recalled and testified further as follows:

Recross-Examination

By Mr. Garrett:

Q. Now, about this rehearsal election, Mr. Spallino, tell me about that; would you?

A. Well, the day before this rehearsal election they passed [1120] out sample ballots outside the employment entrance, whether you wanted the C.I.O. or yes or no. The following morning there was a stand out there with the American flag and they had a fellow out there at the box taking in the ballots.

Q. Who staged this rehearsal election? Was it staged by the National Labor Relations Board?

A. No, it was staged by the C.I.O.

Q. C.I.O.?

A. Yes; United Steelworkers.

Q. You say they had an American flag there?

A. Yes.

Q. Where did that come from; do you know?

A. That is a surprise to me, too. I walked up there and they had the ballot box there and they

had the American flag there, and I passed by and threw my ballot in.

(Testimony of Charles Spallino.)

Q. That was a demonstration by the president of the C.I.O., and it was about a week before the actual election?

A. I wouldn't say a week, probably two or three weeks before.

Q. What part did you have in this mock election?

A. I was just one of the voters, that is all.

Q. You were, along with the other employees, instructed at that time how to mark your ballot, so you would know what to do when the regular election came along; is that correct?

A. How was that?

Mr. Garrett: Read the question. [1121]

(The question was read.)

The Witness: No.

Q. (By Mr. Garrett): Who was there representing the C.I.O.? A. Who was there?

Mr. Garrett: Read the question.

(The question was read.)

The Witness: All this trial election?

Trial Examiner Kent: Yes.

The Witness: I don't recall who was at the ballot box, because I didn't pay any attention. I was going to work. I threw my ballot in and went in the plant.

Q. (By Mr. Garrett): Did you see anyone there whom you knew was identified with the C.I.O., either as an organizer or business agent or employee of the C.I.O.?

(Testimony of Charles Spallino.)

A. Oh, it could have been this fellow Otto, that is all I know him by; Otto, kind of a stout fellow. I see him there, all that I see there that I can recall. I went right in the plant.

Q. What time was this mock election taking place, what time of day?

A. It was in the morning just before work. I would say it was about 7:30 or a quarter to 8:00, somewhere around there.

Q. Well, did you know it was going to take place before you came there to deposit it, your ballot?

A. Well, the ballots were passed the night before.

Q. You are going to have to answer my questions. A. That is an answer.

Mr. Nicoson: I think that is an answer.

The Witness: I did know the night before, sure.

Q. (By Mr. Garrett): All right. You did know the night before. Who told you?

A. The ballot itself.

Q. How long before this mock election took place did you know it was going to happen?

A. I didn't know before that.

Q. You didn't know before when?

A. Before the pamphlets were given out or the ballot or whatever you want to call it.

Q. When were they given out?

A. The day before the election.

Q. Where?

A. In front of the employees' entrance.

Q. Who by? A. United Steelworkers.

(Testimony of Charles Spallino.)

Q. Did you know they were going to be given out at that time? A. I did not.

Q. Didn't Louie Ortega and you have any conversation about it? A. No.

Q. You were surprised when you came out of the plant and [1123] saw them giving out these sample ballots?

A. I was surprised, every night we saw ballots out there or leaflets, either the A.F.L. or C.I.O. would have leaflets there every night, or every other night before the election.

Q. This time you got a sample ballot is that right?

A. Wasn't a sample ballot. It was a ballot, a trial.

Q. What did the ballot look like? Did it look just like the one you used a week later when you voted? A. No, not exactly like that.

Q. What was the difference?

A. I don't remember the difference. The difference was in the government election it had three squares there; this here only had two; it says whether you want to vote C.I.O. or not.

Q. Only had one. A. Yes, I know.

Q. Vote for the C.I.O., yes or no?

A. It was yes or no.

Q. You took the ballots the night before, and then what did you do with them? You took them home with you; did you?

A. Yes, I took mine and put it in my pocket and

(Testimony of Charles Spallino.)

got in the car. I am anxious to get going when I get off from work.

Q. You didn't know anything about this mock election before you received the sample ballot?

Mr. Tyre: Objected to; asked and answered.

Trial Examiner Kent: He may answer. [1124]

The Witness: I did not know before.

Q. (By Mr. Garrett): You are shop steward for the C.I.O.?

A. I was elected shop steward after the election, after over a month or maybe a little later than that at one of the meetings I was elected shop steward.

Q. Was that by a secret ballot?

A. No. There was no secret ballot.

Q. Were there ballots?

A. It was out in the open.

Q. Did the ballot say elect Charlie Spallino or not have any shop steward or what?

A. I don't get that.

Q. What did the ballot say when you were elected?

A. They didn't have any ballot——

Q. They didn't any any election either, did they?

A. Yes, there was an election.

Q. Who counted the ballots?

A. There were no ballots.

Q. Who counted the ballots in the N.L.R.B. election?

A. I wouldn't know, I told you that.

Q. You didn't have anything to do with counting the ballots, did you? A. No.

(Testimony of Charles Spallino.)

Q. Did you see any ballots there that were passed out by the C.I.O. the week before? [1125]

A. No, I did not.

Q. What was the vote by which you were elected stop steward?

Mr. Tyre: I object to that, your Honor. This is improper cross-examination. It is a field which is entirely new.

Mr. Garrett: Don't you want to know who were your members there?

Mr. Tyre: Nobody has gone over that before. It is incompetent, irrelevant and immaterial, has no bearing on the issues in this case.

Trial Examiner Kent: What is the purpose of the inquiry, Mr. Garrett?

Mr. Garrett: This man here is evidently a specialist in elections. He is appointed an observer by the N.L.R.B. for the A.F.of L. in an election——

Mr. Nicoson: I object to that statement as being contrary——

Mr. Garrett: He is an expert on his own admission. I want to see how good he is.

Mr. Nicoson: It is contrary to the evidence. The evidence did not sustain either.

Mr. Tyre: I think the obvious answer now is the objection, your Honor.

Mr. Garrett: What would you do in a union to rehearse its members in order to get them to vote right? [1126]

Trial Examiner Kent: It seems to me that is

(Testimony of Charles Spallino.)

going into the internal workings of a labor organization.

Mr. Garrett: A political party.

Trial Examiner Kent: I will sustain the objection. [1127]

Mr. Garrett: Well, maybe I am going a little far afield.

Q. (By Mr. Garrett): Mr. Spallino, I want to ask you whether you know who voted for you for shop steward besides yourself. I assume you would tell us if the election was—you can volunteer if you want to.

Mr. Tyre: There is an objection and I take it that has been sustained. Is that right, your Honor?

Trial Examiner Kent: Yes, the other objection was sustained, yes.

Q. (By Mr. Garrett): Mr. Ortega now is president of the C.I.O. there in the plant, is he not, Mr. Lewie Ortega is president of the C.I.O. at the O'Keefe and Merritt Company?

A. That is right.

Q. And you are the chief steward?

A. That is right.

Q. Were you both elected at the same time?

A. That is right.

Q. And in the same way?

A. And in the same way.

Mr. Nicoson: And by the C.I.O. I suppose counsel refers to the United Steelworkers.

Mr. Garrett: You have——

Mr. Nicoson: Am I correct, Mr. Garrett, that

(Testimony of Charles Spallino.)

by the [1128] term C.I.O. you refer to the United Steelworkers? I admit my question and possible objection comes a little late.

Mr. Reed: I submit, Mr. Examiner, that I believe the witness was inferring that he meant the Steelworkers when he said C.I.O. the same as the counsel for the Board takes it to mean when he says he was organizing for the A.F.of L. that he thereby meant that he was organizing for all the crafts in the A.F.of L.

Mr. Nicoson: If that is the understanding and the witness so understood it, I have no objection.

Q. (By Mr. Garrett): Do you know what labor organization you belong to, Mr. Spallino?

A. What organization I belong to?

Q. Yes.

A. The United Steelworkers. I can find the local for you in just a second.

Q. Do you belong to any local of that organization?

A. Yes, I do.

Q. What local? A. This——

Q. You don't need to refer to your notes. You can remember, can't you?

A. This is not a note. This is my card.

Q. You are the——

Mr. Nicoson: Wait just a minute. Let him answer that question. [1129]

Mr. Tyre: Let him finish.

Mr. Garrett: May the record show the witness is reaching into his pocket and pulling out papers?

(Testimony of Charles Spallino.)

Mr. Nicoson: May the record show further that he has reached in his pocket and brought out his dues card and he is referring to that to find out the local number.

Trial Examiner Kent: The record may so show.

Mr. Garrett: Do you know whether the United Steelworkers are affiliated with the A.F.of L. or C.I.O.?

Mr. Nicoson: Are you abandoning your previous question?

Mr. Garrett: No, he answered it.

Mr. Nicoson: We didn't hear it.

The Witness: Local 1981.

Q. (By Mr. Garrett): Are you sure that is the number? Better look at your card again.

A. Want me to look again?

Mr. Tyre: Just a minute. That is enough. That is argument.

Trial Examiner Kent: No, let's proceed.

Q. (By Mr. Garrett): Is that organization affiliated with the C.I.O.? A. I think so.

Q. As an official of the C.I.O., can you tell me why the United Steelworkers Union are referred to on their literature as U.S.A.? [1131]

Mr. Tyre: I will object. That is immaterial and irrelevant.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): I have here a piece of literature, which is literature that is put out by your local, Local 1981. You know about all the literature that goes out, do you not?

(Testimony of Charles Spallino.)

A. I haven't had a chance to see that. This is something late, I think.

Q. You will read it when you get a chance to?

A. Yes, yes, I will.

Q. As a matter of fact, you had something to do with preparing it, didn't you? Well, I have one here that has just been handed me, entitled "Local 1981 News." I want to read you the first page of it so you can see whether you can identify this.

Mr. Nicoson: I object to that as being immaterial and an improper way to refresh the witness' recollection, by reading it in the record. He should show it to him, and I object to it going in the record in any guise, at least for the present. If he wants him to see it, let him show it to him.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): I hand you what purports to be a copy of Local 1981 News bearing no date but apparently of recent [1131] date since it refers to your testimony here in this hearing, and ask you whether you have ever seen it before. Have you read the publication that I have just shown you?

A. I have.

Mr. Garrett: May I have that marked the exhibit next in order for identification for the unions, parties to the contract?

(The document referred to was marked as A.F.of L. Exhibit No. 1, for identification.)

Q. (By Mr. Garrett): This pamphlet says at

(Testimony of Charles Spallino.)

the beginning "Local 1981 News, Hearings before the National Labor Relations Board——"

Mr. Nicoson: I object to reading any portion of the pamphlet in here. He brought it, he stated, for the purpose of refreshing the witness' recollection. The witness has now seen it. I object to reading it in the record. If he wants to make it a part of the record, he should offer it, so that we get a chance to object to it.

Q. (By Mr. Garrett): Have you read the first page of this? A. That is all I have read.

Q. Are all the statements on the first page true?

Mr. Tyre: Objection, immaterial and irrelevant.

The Witness: I didn't write the stuff.

Mr. Tyre: Just a minute.

Trial Examiner Kent: Wait a minute, now.

Mr. Nicoson: I join in the same objection, being immaterial.

Q. (By Mr. Garrett): You read that, didn't you? A. Yes.

Trial Examiner Kent: Wait a minute. I will sustain the objection, unless counsel shows the purpose and can show that it is germane and material to the issues.

Q. (By Mr. Garrett): Is it a fact that you were chief shop steward of C.I.O. at the time this pamphlet was written?

Mr. Nicoson: Objected to, because it is impossible to answer, because it bears no date, and there is nothing in here to show when it was issued; for the further reason it is immaterial, irrelevant and

(Testimony of Charles Spallino.)

incompetent, and not proper redirect examination or recross-examination. I could think of a few more if I had time.

Trial Examiner Kent: What's the purpose of the present line of inquiry?

Mr. Garrett: Impeachment.

Trial Examiner Kent: How?

Mr. Garrett: Impeachment of this witness, trying to show his interest and the character of his testimony here. I think I have a right, particularly, to show whether or not he is using these proceedings in his organizing activities and how and for whom.

Trial Examiner Kent: He has testified that he is [1133] presently the union's chief shop steward. What additional purpose will the introduction of that document serve?

Mr. Garrett: Here is an account given concerning this man's views and also his testimony, evidently supplied by him to whoever joined in writing this pamphlet. The pamphlet is issued by his own organization. [1134] The pamphlet refers to his testimony in this action. The pamphlet shows that on the first page is written apparently for the purpose of providing a build-up for the witness, talks about his long term of service with the company and his long term of service as president of the Five and Over Club, then it tells how——

Mr. Nicoson: Just a minute. I am going to object to his reading and paraphrasing this document

(Testimony of Charles Spallino.)

into the evidence. If he has an offer, let him present it so we can get at it and do so in the proper manner.

Mr. Garrett: I want to know specifically what he means when he says——

Mr. Nicoson: If you want to do that off the record, all right, but I am certainly objecting——

Trial Examiner Kent: Are you going to offer it, Mr. Garrett?

Mr. Garrett: Well, I haven't had it identified. Now, of course this witness disclaims knowledge of it, and I should like to question him regarding some of the alleged facts set forth here. They all relate to him and his testimony.

Mr. Collins: I think it is highly pertinent.

Mr. Garrett: He says——

Mr. Nicoson: Wait just a minute. I am going to object to this going in the record, any of it. If you are going to [1135] read it to the Trial Examiner, we will go off the record.

Trial Examiner Kent: If you want to make an offer, I will consider the exhibit and rule on it.

Mr. Garrett: No, I am not going to offer the exhibit now. I will have to get Mr. McCaskell or someone else who wrote it to identify it. Right now it is only a paper in the case, as long as the witness says he doesn't know anything about it.

Q. (By Mr. Garrett): You have seen those things issued before, haven't you, Mr. Spallino?

A. Sure. I have never seen them in the making. I see them like anybody else does.

(Testimony of Charles Spallino.)

Q. Don't you feel any responsibility for what is incorporated in this? A. No.

Mr. Tyre: Objection.

Mr. Nicoson: Note my objection.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): This publication here speaks about a deal between Mr. Roberts and the company——

Mr. Nicoson: I object to paraphrasing and putting it in that way. I *remove* the remark of counsel now be stricken. I further move that your Honor admonish him to stop these proceedings which are highly improper, which you have ruled time and time and again that he cannot do, and which he [1136] insists on doing. I think we have more important things to do than to sit around here and waste time.

Trial Examiner Kent: The remark may be stricken.

Q. (By Mr. Garrett): Did you have anything to do with engineering a deal between Mr. Roberts and the O'Keefe and Merritt Company?

Mr. Nicoson: I object to that as immaterial, also assuming a fact not in evidence.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

Trial Examiner Kent: The answer may be taken to that. You may answer.

The Witness: Did I ever——

(Testimony of Charles Spallino.)

Trial Examiner Kent: Read it to him. Now listen to it.

(Question re-read.)

A. No.

Q. (By Mr. Garrett): Are you trying to arrange any deal between Mr. Despol and the O'Keefe and Merritt Company?

Mr. Tyre: Objection, immaterial and irrelevant.

Trial Examiner Kent: The answer may be taken.

A. I am not arranging any deals with anybody.

Q. (By Mr. Garrett): Are you going to serve the C.I.O. as you have in the past served the A.F.of L.?

Mr. Nicoson: Object.

The Witness: We had an election—— [1137]

Mr. Nicoson: Objected to as immaterial and irrelevant and incompetent, and it is certainly degrading to the witness, as Mr. Garrett accused me of doing yesterday.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Garrett): Did you ever notice that anybody was trying to keep anyone in the plant from getting a wage increase except in the case of a few favored stooges?

Mr. Tyre: Just a minute, your Honor. Mr. Garrett is now engaging in the very same practice to which Mr. Nicoson objected and for which he was criticizing him, and I think your Honor admonished him. Now he is again resorting to the same sort of contemptuous tactics. I think it is contemptuous of the Trial Examiner for anybody

(Testimony of Charles Spallino.)

to be taking up the time of counsel with this sort of ridiculous question.

Mr. Collins: I don't mind him taking up my time. I think it is highly pertinent.

The Witness: Could we go off the record just a minute so I can say a word?

Mr. Nicoson: You keep quiet.

Trial Examiner Kent: Is there a question pending, Mr. Reporter?

(Question read.)

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): Have you ever represented to anybody, Mr. Spallino— [1138]

Mr. Tyre: Objected to.

Q. (By Mr. Garrett): —that anyone in connection with the O'Keefe and Merritt plant is conspiring to violate a government certification?

Mr. Nicoson: Objected to as calling for a legal conclusion of the witness.

Mr. Tyre: May the record show that Mr. Garrett is still reading from the same document which you have told him he should not be doing three times now, the objection has been sustained.

Mr. Nicoson: More than that.

Trial Examiner Kent: Read that question.

Mr. Nicoson: We ought to have some end to this now, if your Honor please. You have ruled that he can't go into that unless he wants to offer it so that we can get at it in a proper manner. I submit that it is highly improper to permit him

(Testimony of Charles Spallino.)

to keep on going over and over and over the things that you say he may not do.

Trial Examiner Kent: If that is the source of your information, Mr. Garrett, I do think it is questionable. If you want to have that document identified and then offer it, I will then consider it and make a formal ruling.

Q. (By Mr. Garrett): Will you tell us the reason why you distributed the C.I.O. literature before the Sunday meeting and why you chose the toilet as the place to distribute that literature?

A. I didn't distribute any literature.

Q. Didn't you testify on direct that before you went to that C.I.O. meeting that Sunday in 1944 that you participated in putting out literature for the meeting?

Mr. Nicoson: I submit that that is not a proper summation of the witness' testimony, and object to it, because it assumes a fact not in evidence.

Mr. Garrett: He testified he distributed literature for the C.I.O.

Mr. Nicoson: He did not.

Mr. Garrett: About the meeting on Slauson Boulevard on a Sunday in 1944. [1140]

Mr. Nicoson: He did not say such a thing.

Trial Examiner Kent: There is a challenge to the record. I would like to see the record on that. My recollection is——

Mr. Garrett: It will be found there in almost the last sentence of his redirect by Mr. Nicoson. That is on March 20th in the morning. Reading

(Testimony of Charles Spallino.)

from Page 926 of the transcript, at which Mr. Nicoson was examining you, question by Mr. Nicoson—

Mr. Nicoson: By Mr. Tyre.

Mr. Garrett: No, question by Mr. Tyre, that is right.

“Q. When did you distribute any cards?

“A. It was before that Sunday meeting that I went to the C.I.O.

“Q. Where did you distribute them?

“A. In one of the lavatories in the plant.

“Q. About how many cards did you distribute? A. About six or eight.

“Q. Have you distributed any others besides those six or eight?

“A. Not in the plant.

“Mr. Tyre: That is all.”

Q. (By Mr. Garrett): Do you recall giving that testimony? Now, will you kindly answer my question. Why did you use the toilet as the place to distribute those cards?

Mr. Tyre: Objection, irrelevant and immaterial, has no [1141] bearing on the issues involved in this case.

The Witness: May I——

Trial Examiner Kent: No, the answer may be taken. You may answer.

The Witness: Why?

Trial Examiner Kent: No, that was not the question. I think it was where.

Mr. Garrett: No, why.

Mr. Tyre: That was why I objected.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Oh, I will sustain the objection.

The Witness: Well, your Honor, I wouldn't take up——

Trial Examiner Kent: Never mind.

Q. (By Mr. Garrett): Were these cards that were distributed in the toilet issued by the C.I.O.?

A. That is right.

Q. Where did you get them?

A. I got them outside from one of the fellows.

Q. From whom?

A. From one of the fellows.

Q. When did you first meet Mr. Despol, how long was it after the mock election?

A. It was just right after that.

Q. Was it at the mock election?

A. Right after that, I said.

Q. How soon after? [1142]

A. Oh, it might have been a couple of days or so after.

Q. Where did you meet him?

A. He came to my home, him and Louie Ortega.

Q. Beg your pardon?

A. He and Louie Ortega came to my home.

Q. And that was before the election of the National Labor Relations Board?

A. That is right.

Q. And about what time did they come to your home?

A. Oh, I would say about six or six-thirty in the evening.

(Testimony of Charles Spallino.)

Q. Did they come by appointment? Did you know they were coming? A. Yes.

Q. How did they arrange the meeting?

A. How did they arrange the meeting?

Q. How was the meeting arranged?

A. Well, Louie Ortega called me and told me that him and John Despol was going to be over at my house at 6:00 o'clock.

Q. Did Mr. Ortega ever tell you how long he had known Mr. Despol?

A. No, I never asked.

Q. Did he ever tell you whether or not he was working for the C.I.O.?

A. He was not working for the C.I.O. He was trying to organize the place. [1143]

Q. Did he ever tell you whether or not he was an organizer for the C.I.O.? A. No.

Q. Did he ever tell you that he had been a paid organizer for the C.I.O. in the Brown-Saltman Furniture Company some years previous?

A. No.

Q. Who was present when you and Mr. Ortega and Mr. Despol talked at your home?

A. Who was present?

Q. That is right.

A. Just us three. My wife was in the house.

Q. Did you make any arrangements then as to how you were to act as observer in the N.L.R.B. election?

A. I was told not take the job as observer, to refuse it, which I did.

(Testimony of Charles Spallino.)

Q. Was it arranged that Mr. Louie Ortega would be an observer for the C.I.O.?

A. That is right.

Q. And isn't it a fact that it was arranged that you would be an observer for the A.F. of L.?

A. Like I stated before, I was not supposed to take any part in that election.

Q. Why was that? A. I don't know.

Mr. Tyre: Object. It calls for a conclusion, your Honor.

Mr. Nicoson: Yes, and it is immaterial.

Trial Examiner Kent: Sustain the objection.

Mr. Garrett: Withdraw that.

Q. (By Mr. Garrett): Did Mr. Despol tell you why you were not to take any part in the election?

Mr. Tyre: Object to that, your Honor, as immaterial and calls for a conclusion.

Trial Examiner Kent: He may answer.

The Witness: No, he didn't tell me why.

Q. (By Mr. Garrett): The fact of the matter is he told you that you were not to reveal the fact that you were working for the C.I.O. but were to continue to pretend that you were working for the A. F. of L., isn't that right?

A. No, being my position as president of the Five and Over Club, I could not take any part at the election.

Q. He knew you were pretending to work for the A. F. of L., didn't he?

Mr. Tyre: Objection, calls for a conclusion as to what Mr. Despol knew.

(Testimony of Charles Spallino.)

Mr. Nicoson: I join in that.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): What did he tell you in that respect?

Mr. Nicoson: Objected to as assuming a fact not in evidence. [1145]

The Witness: I don't remember.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): How long did you and Mr. Ortega and Mr. Despol talk in that case?

A. As a matter of a few minutes.

Q. Then did they leave? A. Yes.

Q. Together? A. Yes.

Q. Can you recall anything that was said and the conversation?

Mr. Nicoson: That is objected to as immaterial, irrelevant, and incompetent.

Trial Examiner Kent: The answer may be taken.

The Witness: I don't remember what was all said.

Q. (By Mr. Garrett): Do you recall anything that was said?

Mr. Nicoson: That is objected to as having been asked and answered. He already said there were some things said. As an addition to that, do you want him to go over the same thing again?

Mr. Garrett: I withdraw the question.

The Witness: May I have permission to speak?

Mr. Tyre: No, you may not. Answer the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Tell us what was said during that conversation by each of you, in so far as you remember? [1146]

Mr. Nicoson: Object to that as having been asked and answered. For anything in addition he wants to bring out I think that may be a proper question. As to those questions he has already asked and gotten answers about, I submit it is repetition.

Trial Examiner Kent: I think it is repetition. I will grant the objection. Unduly repetitious.

Mr. Nicoson: Thank you.

The Witness: I have something very important to say out in the open.

Mr. Garrett: I want the record to show I am hurt and greatly taken aback at his Honor's ruling, but I guess we will have to abide by it.

The Witness: I was told at 2:00 o'clock——

Mr. Nicoson: Just a minute. I object to any voluntary statements of the witness. I ask your Honor again to admonish the witness to only answer question properly put to him.

Trial Examiner Kent: I think you had better do that, Mr. Spallino. We will probably get along faster.

Mr. Garrett: All right.

Q. (By Mr. Garrett): You had this conversation, anyhow, with Mr. Despol and Mr. Ortega and something was said by each of you at that conversation? A. Naturally.

Q. But it didn't last long? [1147]

A. No, it didn't last long.

(Testimony of Charles Spallino.)

Q. Did you, as a result of what was said at that conversation, do anything?

A. Did I do anything?

Q. Yes. A. Yes, I refused——

Q. As a result of anything that was told you by Mr. Ortega and Mr. Despol, did you take some action as a result of what was said?

A. Yes, I refused the job as the observer at the election.

Q. When were you offered the job?

A. I was offered by—well, I was told that Mr. Roberts had suggested—that he told me himself that they had suggested I be an observer for the A.F.L. I naturally refused it. I told him I wasn't going to take any part.

Q. Did you do anything else, as a result of anything you were told at that meeting with Mr. Ortega and Mr. Despol, which you haven't been able to relate to me?

A. Not that I can remember.

Q. Did you have a subsequent meeting with Mr. Despol?

A. What kind of a meeting is that?

Q. Later on, after the first one?

A. I think it was after the election.

Q. None between that first meeting and the time of the election? [1148]

A. No, not that I can recall.

Q. Do you know why Mr. Despol came out to your house to see you?

(Testimony of Charles Spallino.)

Mr. Tyre: Objection. It calls for a conclusion; irrelevant and immaterial.

Mr. Nicoson: Objected to; repetitious.

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): You have never been to Mr. Despol's house; have you? A. No.

Q. You spoke of union speeches at the Five and Over Club, Mr. Spallino. Did you ever hear any speeches in the Five and Over Club against labor unions?

A. In my time as president, you mean?

Q. I mean, did you ever hear any speeches, referring to the Five and Over Club, against labor unions?

A. Not while I was president.

Q. Well, did you while you were vice-president?

A. I heard some, yes.

Q. Did you make any yourself?

A. I don't remember ever making one.

Q. You mean you don't remember making any speeches to the Five and Over Club or you don't remember making any speeches against labor unions at the Five and Over Club?

A. We never discussed unions in our plant while I was an [1149] officer, as the president.

Q. When you were vice-president, though, you hear some speeches against labor unions in the Five and Over Club?

A. Like I said before, in the past we fought labor unions of all kinds. We didn't have to have

(Testimony of Charles Spallino.)

any unions. Then came the decision on having the labor union. We decided which one we wanted. I got the one I wanted, and I am sticking by it.

Q. Who made this decision about labor unions?

A. We, the employees, at the election.

Q. Did the policy of the Five and Over Club remain anti-union up to the time of that election?

Mr. Nicoson: I object to that as having been asked and answered about five or ten times. It is certainly repetitious and not recross examination; otherwise, immaterial, irrelevant; serves only as surplusage in the record and consumes too much time.

Trial Examiner Kent: I am sorry, the record is not clear. In other words, I haven't a clear recollection. I will let the answer be taken.

Read the question.

(The question was read.)

The Witness: It was for all time, until this came up.

Q. (By Mr. Garrett): Until when?

A. Until this—that we had to join some union in order to sell our product. [1150]

Mr. Garrett: I have no further questions.

Here is the exhibit for identification.

Mr. Collins: I would like to ask Mr. Spallino one question.

Mr. Spallino, you stated you passed out C.I.O. cards in the toilet. Were you being paid for this time by the O'Keefe and Merritt Company?

(Testimony of Charles Spallino.)

The Witness: I suppose you could put it that way.

Mr. Collins: That is all.

Mr. Nicoson: No questions.

Trial Examiner Kent: Are there any further questions?

Mr. Garrett: No further questions.

(Witness excused.) [1151]

Mr. Collins: I notice it is almost 5:00 o'clock. I have been religiously carrying a large bundle of papers to and from this hearing every day. It has lasted for some time, now. I believe if we went off the record about two or three minutes I might arrive at some sort of a stipulation with the Board's attorney, Mr. Nicoson.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I have just shown to counsel for the Board what purports to be all the sales, nearly all the sales and use tax returns for the Board of Equalization for the State of California for the Pioneer Electric Company during the term it has been in business, starting back in 1942 and bringing it up to date.

I have also shown him the quarterly returns of the California Department of Employment from the inception to date of the Pioneer Electric Company.

I have shown him the Social Security returns of the Department of Internal Revenue of the Pioneer

Electric Company, from the date of its inception up to date, including the income tax returns of the company for the same period.

The Board's counsel states to me he has no use for them. Now, he has examined them. They were matters that were brought in pursuant to the subpoena duces tecum. They are bulky [1152] records. I don't like to carry them back and forth every day. I was wondering if they may be marked for identification, with the understanding they may be removed. My people will have to have these records to make—as a matter of fact, under the Income Tax Law they have to maintain them for four years, under criminal penalties. So I am asking the Trial Examiner for some sort of a ruling as to what I may do with these.

I feel they should be part of my case, to substantiate the allegation the Pioneer is a separate legal entity, making all the returns that were customarily filed by the business in this state.

Mr. Nicoson: Let the record show, so far as the Board is concerned, they have examined those records. There is nothing in there we intend to use in the way of evidence.

We will excuse any further production of these particular documents as the result of the issuance of the subpoena duces tecum. I don't want to become custodian of them. I don't object to having them marked for identification.

Trial Examiner Kent: You have the Board's statement. You retain and offer them at the proper time. That would save your bringing them back and

forth. Offer them at the proper time, those you think are material.

Mr. Collins: Mr. Trial Examiner, these records are very bulky. I am not going to be able to leave them with the [1153] records. I am wondering if you would care to take them at this time and at various times during the proceeding look at them and possibly dictate into the record that part you deem pertinent. I can't leave them, there are too many of them to make copies.

Mr. Nicoson: I object to the Trial Examiner reading anything into the record he deems pertinent; it is not part of the evidence.

Trial Examiner Kent: The Board's attorney has stated he has considered them and, in substance, they have been produced pursuant to subpoena. He doesn't intend to use any of them as part of his case.

Mr. Collins: May I have these marked for identification and reserve the right to withdraw them later on if I deem it is necessary? I don't want to carry them around from day to day while this proceeding is going on.

Trial Examiner Kent: I wonder what the purpose of having them marked is unless you intend to offer them?

Mr. Collins: I do intend to offer them. The Board's attorney has already examined them. It will save us the trouble of going through them again.

I will offer for identification as respondent's next in order the sales and use tax returns for the Board of Equalization.

Trial Examiner Kent: It may be marked. [1154]

(The documents referred to were marked as Respondent's Exhibit No. 4, for identification.)

Mr. Nicoson: This is only for identification?

Mr. Collins: Yes. Respondent's Exhibit 5, quarterly returns, California Department of Employment.

(The documents referred to were marked as Respondent's Exhibit No. 5, for identification.)

Mr. Collins: Respondent's Exhibit 6, Social Security returns, Department of Internal Revenue.

(The documents referred to were marked as Respondent's Exhibit No. 6, for identification.)

Mr. Collins: As Respondent's Exhibit 7, four policies of insurance covering Workmen's Compensation.

(The documents referred to were marked as Respondent's Exhibit No. 7, for identification.)

Mr. Collins: As Respondent's Exhibit 8, 10 letter sized sheets being communications between the War Department Office of the Undersecretary, Price Adjustment Bureau, the Army Service Force, Signal Corps, Cost Analysis Agency and the Pioneer Electric Company, dealing generally with the question of renegotiation.

(The documents referred to were marked as Respondent's Exhibit No. 8, for identification.)

Mr. Collins: Subject to being withdrawn if they are not admitted in evidence or even though they are admitted in [1155] evidence later on, summation should be taken of them for the reasons heretofore stated.

Trial Examiner Kent: The question of withdrawal, they haven't been formally offered and formally denied. At present they stand as just being marked for identification, according to the descriptive terms used by counsel in identifying them.

Mr. Collins: It will be practically impossible to make copies of these policies of insurance. At the same time, the current policies are essential in the event an employee is injured. We might have to prove we have a policy.

Trial Examiner Kent: I would suggest the local insurance agent that wrote the insurance would probably furnish you a blank copy and you can make a copy of it if it is necessary, or have a photo-static copy made.

We will adjourn until 9:30 tomorrow.

(Whereupon, at 5:05 o'clock, p.m., March 21, 1946, an adjournment was taken until 9:30 o'clock a.m., on Friday, March 22, 1946.) [1156]

Friday, March 22, 1946

10:00 o'Clock A.M.

Trial Examiner Kent: You might proceed.

Mr. Nicoson: Please mark this document for identification.

(Thereupon, the document referred to was marked as Board's Exhibit No. 26, for identification.)

Mr. Nicoson: At this time, if your Honor please, I have had marked for identification as Board's Exhibit 26 a mimeographed copy of the contract

entered into between the various AFL unions and the Pioneer Electric Company.

I have talked with counsel here and I understand that it is permissible, they will permit me to put it in without further foundation, subject to the adding to it at a later date the classifications and wage scales which are referred to in the contract as Exhibit A, and which are not attached to this document at this present time.

I have shown it to all the parties. I ask it be admitted now as Board's Exhibit 26.

Trial Examiner Kent: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 26, for identification, was received in evidence.)

[Board's Exhibit No. 26 set forth on pages 1723 to 1738.]

Mr. Garrett: We will stipulate it may go in subject to correction when we have an opportunity to compare it with the original. [1161]

Mr. Collins: I will join in that stipulation.

Trial Examiner Kent: Subject to further comparison?

Mr. Garrett: Yes.

Trial Examiner Kent: Yes, I think on the ground of fairness any prepared copy of an exhibit that goes in——

Mr. Garrett: Is that 26?

Trial Examiner Kent: ——the parties may have an opportunity to further compare for errors.

Mr. Nicoson: I assume, your Honor, that check-

ing and any corrections will be made before this hearing is over.

Trial Examiner Kent: Oh, yes.

Mr. Nicoson: If not, then that will not affect the validity of the documents?

Trial Examiner Kent: That is true. Yes, counsel may have an opportunity to withdraw it for a reasonable time, in order to do that.

Mr. Nicoson: Please mark these documents for identification.

(Thereupon, the documents referred to was marked as Board's Exhibits Nos. 27, 28 and 29, for identification.)

Mr. Nicoson: I have also had marked for identification the duplicate and original of three articles of co-partnership with respect to the Pioneer Electric Company. They have been marked Board's Exhibit 27, Board's Exhibit 28, and Board's Exhibit 29. [1162]

Board's Exhibit 27 is the Articles of Co-partnership that were entered into on the 15th day of August, 1942;

Board's Exhibit 28 is the Articles of Co-partnership made on the first day of January, 1944;

Board's Exhibit 29 is the Articles of Co-partnership made on the 15th day of November, 1945.

Mr. Collins and I have stipulated that they may be received in evidence without further foundation.

I offer them subject to other counsel's comments or objections. Let the record show I show them to the parties.

(Documents were exhibited to counsel.)

Mr. Nicoson: I have now shown Board's Exhibit 27, 28 and 29 to the parties, and I think I have heretofore offered them for the record. If I have not, I will offer them again.

Trial Examiner Kent: Hearing no objections, they may be admitted.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 27, 28 and 29, for identification, were received in evidence.)

[Board's Exhibits Nos. 27, 28, and 29 set forth on pages 1738 to 1752.]

Mr. Nicoson: It is stipulated by and between Mr. Collins on behalf of the Pioneer Electric Company and myself on behalf of the Board that with respect to the Pioneer Electric Company business, the amounts stated in our stipulation with respect to O'Keefe & Merritt are substantially the same with respect to Pioneer Electric Company, that is, the annual business is in excess of \$2,000,000.00, and that ten per cent is shipped out of the state. I offer to stipulate to that, and I think Mr. Collins agrees with me. Is that correct?

Mr. Collins: Yes, I will so stipulate.

Mr. Nicoson: The Board rests.

Trial Examiner Kent: Let the record so show.

Mr. Collins: I will call Mr.—

Mr. Garrett: At this time, if your Honor please, we ask for a continuance until the end of next week for the purpose of preparing our case.

Trial Examiner Kent: To what?

Mr. Garrett: At this time, if your Honor please, the unions, parties to the contract, represented by

me, are asking for the continuance which has been mentioned in connection with our prior motion at the beginning of this hearing.

Trial Examiner Kent: Well, we had substantially a three-day continuance, to permit counsel time for further preparation, at the opening of the hearing. It is now Friday morning, a little after 10:00 o'clock, but we do not sit tomorrow morning. I am inclined to think that a short continuance, the balance of this day, would help and probably facilitate obtaining a shorter and maybe a better record, but——

Mr. Garrett: We desire to have——

Trial Examiner Kent: There is another angle here, of [1164] course.

Mr. Garrett: We desire to have at least Monday also for the purpose of conferences which cannot be arranged until then.

Mr. Collins: Mr. Trial Examiner, a witness on behalf of the Pioneer Electric Company, William Durant, who has been mentioned frequently in these proceedings, was ready to testify on the 6th of March, I believe it was, when this was originally called. He came into court on instructions from Mr. Nicoson, I believe it was one day last week, prepared to testify, and I think it was Monday of this week he received a call from the Navy Department regarding these generators that we manufacture; they wanted some kind of a test or other, or something like that given to them, so he had to fly back to Washington. According to my informa-

tion he will be back in town Monday, or it may be Tuesday before he gets back, and he is certainly a material witness.

Trial Examiner Kent: If I adjourn over to Monday——

Mr. Schullman: That is not an adjournment.

Mr. Garrett: If your Honor please, Mr. Stevenson, representing the Teamsters, you recall, if your Honor please, he spoke at the time of the first motion for continuance about his obligation to finish a hot cargo case in Santa Ana. The attorney who would have taken my place in these proceedings had he been able to be here finished his work in the [1165] Union Ice case, also a hot cargo case, a case under a statute of this state relating to a secondary boycott, in which Mr. Stevenson also represented different unions, in the middle part of this week, whereupon they proceeded into the hearing—or in the early part of this week, whereupon they proceeded into the hearing of a hot cargo case in Santa Ana, which they expected to be concluded yesterday, but which ran through the entire day yesterday. I now learn that they are returning to Los Angeles. I have to have an opportunity to confer not only with my clients now but with Mr. Stevenson, who has not had an opportunity to be here, and I don't see how that work can possibly be accomplished except on Monday. So I respectfully urge therefore if we are to have a recess which is to mean anything to the unions to protect their interests, it should include Monday of next week. I think that with the notice we have now

and with the facts available, we can get ourselves into shape to go ahead with the hearing.

Mr. Schullman: I want to join in that, except I want to urge that you are not granting a continuance when you grant one until Monday, I mean, except for today. Saturday is necessarily not a working day and Sunday, of course, intervenes. I have several motions I wish to make which probably could be made now, but I want to confer with my clients, and I may say that Judge Padway, the AFL chief counsel, will be in town Monday, Tuesday and Wednesday. We have a [1166] conference with him on this matter, and I could at least see him Tuesday. Now, I think that if the thing goes over until Wednesday, we would be in a position in this case to make several motions. I would like to argue them when we do make them. We would like to be in a position of having a full consultation of all parties involved. In all due deference to the Trial Examiner, while we adjourn today, we are willing to go on today, but an adjournment over Saturday and Sunday is not an adjournment as such.

Trial Examiner Kent: Saturday, certainly is in our practice.

Mr. Schullman: I don't know whether you are considering Saturday. I don't think you have in this case.

Mr. Garrett: Certainly Monday would be a much more useful day for us, with Judge Padway here, than would today, if a choice had to be made.

Mr. Nicoson: I would not object to it going over until Tuesday.

Mr. Schullman: Off the record. Let me remark about it——

Trial Examiner Kent: No, let's stay on the record.

Mr. Schullman: Well, on the record, then, if we continue it to Monday, we may not—I mean, he has to consult with witnesses and Mr. Stevenson has not consulted with him, and the various painters all have to consult with Judge Padway. I think for the purpose of saving time here we would be in a position to know certainly what we are going to do on Wednesday. As I say, we all may have several motions after they terminate the case, and we may not. I don't know.

Trial Examiner Kent: Well, in view of the numerous issues, I do not consider that a short adjournment is probably a waste of time, because I think counsel on reconsidering the record may possibly shorten the length of time required to put in their case, but there is another angle in this particular case. We have been a little slow in getting started and lost considerable time. I have not been too hard-boiled, probably not hard-boiled enough, but I assume counsel have spent hours preparing for this matter, in addition to the three days we had at the beginning. I don't like to prolong the length of the hearing unduly, but in view of counsel's remarks and requests, I will adjourn until 9:30 on Tuesday morning. That will give you ample time, Mr. Schullman, to consider your motions, and you

may withhold offering them. It is a reasonable assumption that the balance of the case will take at least two days, so that will give you until Wednesday or Thursday.

Mr. Schullman: That is satisfactory. What I had in mind, I have not discussed the motions with counsel. It may be that they will persuade me not to make them. If we make them, it may be that it will shorten the whole case. I mean, we may make certain motions and we may not, we may not want to [1168] make any, but I want to consult all counsel before we move it that situation.

Mr. Tyre: I would like the record to show, Mr. Examiner, that I object to any continuance. You will recall that all A. F. of L counsel objected rather strenuously to proceeding with the hearing when it was first called, and the reason given was that they were going to require time to prepare their defense in this matter, and you continued the matter not for three days as your Honor stated, but for one week.

Trial Examiner Kent: Well, I was talking about three hearing days, Monday, Tuesday and Wednesday. On the other two days there was some question as to service, which I think precluded our starting the case until either Friday or Monday. That was what I meant by reference to three days.

Mr. Tyre: Yes, but there was a week's continuance from the actual date the hearing was set.

Trial Examiner Kent: That is true.

Mr. Tyre: For the sole purpose, as I understood it at least from the statement of counsel, to prepare their defense.

Trial Examiner Kent: Well, of course, that was part of the proposition, another part was to avoid any question as to service, and Mr. Schullman, I believe, made a motion that in effect was a request for further time to file an answer.

Mr. Tyre: Well, I wanted the record to show, your Honor, [1169] that in view of the continuance, I object to a continuance at this time.

Trial Examiner Kent: The record may so show.

Mr. Schullman: Even though the Trial Examiner has ruled, I want the record to show that originally a short continuance was granted, and that was requested by several counsel, and furthermore, that the Trial Examiner at the commencement of the case said upon the close of the government's case a continuance would be granted to meet whatever is raised at that time.

Trial Examiner Kent: Well, the record would show what I said. I don't remember that now. I probably indicated, I think, in a hearing of this kind where there are a number of issues a comparatively short continuance is a timesaver in the long run. We will adjourn then until 9:30 Tuesday morning.

(Whereupon, at 10:20 o'clock a.m., March 22, 1946, the hearing was adjourned to 9:30 o'clock a.m., Tuesday, March 26, 1946.) [1170]

Tuesday, March 26, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: On the record.

Apparently some of counsel are going to be delayed. It is now nearly a quarter of 10:00. I think we had better start moving.

Mr. Garrett and Mr. Schullman have previously, of course, indicated on the record that if they weren't here they had no objection to our proceeding.

Mr. Collins: I don't have my witnesses, Mr. Trial Examiner. I am expecting them. I told them to be down here at 10:00 o'clock. I assumed, from what Mr. Garrett and Mr. Schullman said, we would have some motions to make first.

Trial Examiner Kent: Yes. Mr. Schullman so intimated the other day. I guess we will have to take a recess until the witnesses appear.

(Short recess taken.)

Trial Examiner Kent: On the record.

Mr. Collins: Prior to opening the respondent's case, I would like to make two motions. First, I would like to make a motion to dismiss as to the Pioneer Electric Company. The Board has very ably presented a case, in my opinion, which has little or no merit. They have left no stone unturned. Mr. Nicoson has gone to the greatest lengths and used all of the diligence that his office requires, and in my opinion he has gone a little bit further than that even. [1174] He certainly ably presented a weak case.

The Pioneer Electric Company, according to the evidence that has now been adduced from his witnesses, started in business back in 1942, and leased a portion of the factory of the O'Keefe and Merritt Company, and has maintained that lease or a continuation of that lease or a new lease ever since.

This isn't the case of one concern taking over another. Both of them have been in business together all the time.

He has proved that the O'Keefe and Merritt Company and the Pioneer Electric Company keeps separate records. That the Pioneer Electric Company has made its own income tax returns. It makes its own social security returns and keeps its own workmen's compensation. In my opinion he has proven it is a separate legal entity.

He has proven, according to the evidence of the witnesses, that the manufacture of gas ranges by the Pioneer Electric Company was in contemplation of the parties long before any labor election or any labor difficulties were thought of.

He has proven that Pioneer Electric Company worked for other companies besides the O'Keefe and Merritt Company. He has proven that the employees of the Pioneer Electric Company did not have a vote in this election where now they are claimed to be represented by some union. He has likewise [1175] proven that the employees of the Service Incorporated, who are now employees of the O'Keefe and Merritt Company, did not have a right to vote in the election. He has proven that there are contracts and leases between O'Keefe and Merritt and Pioneer.

He has proven there are contracts between Pioneer Electric and the various AFL locals affected here.

Now, I respectfully submit, Mr. Trial Examiner, that the National Labor Relations Board, under the National Labor Relations Act, does not have jurisdiction to abrogate contracts entered into by these parties. There is no showing before this Board at this time that O'Keefe and Merritt and Pioneer are one and the same concerns. There is no showing that Pioneer Electric has ever had a right to have its employees have any election. Therefore, there is no jurisdiction on the part of this Board to do anything to Pioneer Electric Company, and upon those grounds I move that the action be dismissed as to Pioneer Electric, and in support of that I wish to file a written motion for dismissal.

Now, as to the O'Keefe and Merritt Company, I move for a dismissal upon the following grounds: The evidence clearly shows that Mr. Cecil Collins was the authorized agent of the O'Keefe and Merritt Company to bargain collectively with whoever won the election, the CIO. Now, whether or not that was an honest election I am going to pass at this time, [1176] but I would like to say in passing that the man who was supposed to be watching out for the American Federation of Labor was a traitor in disguise. He was their man looking at the polls, certifying the right of each individual to vote, and all of the time he was seeking and working for the CIO. If there ever was a greater double cross in the history of labor relations, I would like to know

what it was. He has double crossed every one of those 85 people which he talked into joining the American Federation of Labor.

That is the kind of man whose testimony is to be believed here if we are going to proceed at all. I submit to your Honor that his testimony is not worth one cent. It is nothing but a figment of the imagination, he has imagined this, he suspected that, he thinks this, and he was even a difficult witness for Mr. Nicoson to get the truth out of. He didn't want to tell the truth. He wanted to tell a story that would help him win a case. The real rub of that man was that he lost his job as president of the Five and Over Club and he wanted to do something to punish his fellow employees.

But I am selected then as the bargaining agent to talk for the company, and the question is have I bargained for them in good faith. The evidence of the Board shows that the first meeting was held sometime, as I recall, in the latter part of December. That was the first meeting that they [1177] asked for. That was approximately 30 days after they won the election, whether it was honest or otherwise they won it. So I sat down and I bargained with them. The evidence will show I had three or four miscellaneous employees of the O'Keefe and Merritt Company, and I am the bargaining agent and I say we will agree to this and we won't agree to that and so forth.

Now, then, if it is the contention of the Board that I had to sign exactly what the CIO presented to me, I might as well quit right now. That would

have been an order, that would have been dictatorship, that would not have been bargaining, and I have a right to say we will give this and we won't give that. The substantial evidence shows that the only disagreement was on the union security clause. I said we would give maintenance of membership and he said he wanted a union shop. That was the substantial clause. There were other things that were not agreed upon, but they were not deciding. They could have been agreed upon if that clause had been agreed upon.

The second meeting was held within approximately a week thereafter and we went over approximately the same things, and something as I recall about the American Legion wanting to take care of their own affairs instead of having the CIO Union do it for them.

The third meeting was in my office, and that was approximately [1178] a week after that. I think that was on the 3rd of January. The fourth meeting was on the 8th of January. Everyone of those meetings we talked about this clause, we talked about that clause, this was agreed on and that was not agreed to, but in any event we were bargaining.

The fourth meeting was on the 8th of January. We were bargaining along the same line. The fifth meeting was on the 25th of January. At that I did not bring my committee in, because Mr. Despol testified that he told them not to come in. In other words, whether he will admit it or not, he intimidated those employees to the extent that they were afraid to come in to the meeting. What happened

then is just between Despol and myself. He said certain things, and I think that the testimony will clearly indicate that regardless of what he said, it shows that we were still bargaining and we could not agree on the union security clause. That was the rock upon which the wave broke. If we could have agreed on that, we could have agreed to a contract.

Now, I submit that the National Labor Relations Act does not compel me to sign a union shop contract, a closed shop contract, or anything else. It merely says that I have to bargain in good faith, and I believe that the evidence clearly shows that I have, up to that fifth meeting, even.

Now, then, there is evidence that there were two telephone calls, in one of which I was asked if I still were [1179] bargaining for the O'Keefe and Merritt Company, and I believe he admitted I said I was. However, I said at that time in response to his question, "Will you give me the same agreement that you gave for the Pioneer to the A. F. of L.?" I said that I would have to think that one over.

That brings us down to about the latter part of January. Now, then, here upon the 15th day of February, or prior thereto, I think it was just before that happened, about the 12th of February, we had this unfair labor charge filed against the O'Keefe and Merritt Company.

Now, is it the union now that is breaking off the negotiations or has the employer refused to bargain? I submit that the evidence clearly shows

right here, even in this court, that Mr. O'Keefe said he would agree to this, he would agree to that, he would agree to this, he would agree to that. He even said he would agree to any kind of a contract I O.K.'d for him.

Are we still bargaining? I have offered in open court to stipulate that I would sign a contract as to those matters that were agreeable to both parties. That is more than the law requires me to do. All I have to do is bargain. I am now telling these people, "Sure, I will sign that much of a contract. Reduce it to writing." All they would have to do is accept my stipulation in court and they would have the contract. [1180]

I therefore contend that as to the O'Keefe and Merritt Company, the issue is now mute; there is nothing to try. The only possible thing that can be left to try would be some of these alleged unfair activities. If they enter into a written contract, those things are cured.

We are now taking up the time of all these people here today and spending the taxpayers' money to decide something that is no longer at issue. It has been decided by us outside of court. And upon that ground I respectfully submit the action against the O'Keefe and Merritt Company should be dismissed.

Mr. Nicoson: If your Honor please, obviously I oppose any such motion. I do not agree that the evidence in this case makes out anything like what Mr. Collins has just represented to you.

First let's take the latter motion because I think, in my opinion, you can't really separate one from

the other. He would have you believe, and he would have you believe that the record shows that he bargained in good faith with the C.I.O. Union after the election.

It seems to me to be a little obtuse to come in at one time and say, "We are bargaining with you in good faith," at a time when you have already contracted with another outfit to take over the unit in which you are alleged to be bargaining in good faith. You just can't do those things [1181] consistently with good faith. You can't get your business out from under the effects of that bargaining and still be dealing across the table at arm's length in good faith.

Now, the evidence shows here that on the 2nd of January, 2nd of January, mind you, in 1946, the O'Keefe and Merritt Company and the Pioneer Company entered into their second lease agreement whereby it was arranged that Pioneer would take over from O'Keefe and Merritt the manufacturing of stoves and gas appliances and the other things that O'Keefe and Merritt had, with the exception of the war years, and had been carrying on for a period of almost 30 years.

On the very next day after that contract was entered into they had a meeting with the C.I.O., with Mr. Despol, at which uninvited and inconsistent with bargaining in good faith, I submit, the company brought in a committee allegedly of A.F.L. people.

Now, they didn't tell Mr. Despol at that time that "We have sold this business out. We no longer have

a business. We can't bargain with you in good faith because we don't have a business to bargain with you about. The unit for which you have been certified is no longer in existence because we have sold out our business."

No, they didn't make any such statement. They went through all the machinery of going over, over, over, over, over, over. That not only took place, it took place many [1182] times, and the bargaining power for the O'Keefe and Merritt well knew at that very time and at all times thereafter, when he was allegedly going through these motions of bargaining, they had sold the business out from under the bargaining unit and the bargaining representative.

I submit, Your Honor, that no court in the land would hold that is bargaining in good faith. Not only that, we have the further issue of the little matter in the bar, which Mr. Collins has not even touched on. I submit that those do not reflect upon anybody bargaining in good faith. Any time you offer the other party money or suggest to them they take money to withdraw from the bargaining picture, you certainly aren't doing it in good faith. At least, in the National Labor Relations Act and the courts sustaining the orders of our Board have not thought of it as good faith.

Now, with respect to Pioneer and the motion to dismiss as to that. I think equally that is without merit. Mr. O'Keefe, the president of O'Keefe and Merritt, got on the stand and told a very convincing story. I think Mr. O'Keefe was telling the

truth. I think he told the truth when he said that the certification of the C.I.O. was part of the reason why the company decided to transfer their business over to the Pioneer Electric Company. I think Mr. O'Keefe told the truth about that. At least, he has not been impeached yet, and at this stage I think you are required to [1183] believe that he did tell the truth.

If that was the reason or if that was one of the reasons that they transferred over the Pioneer, then I insist that under the decisions of the National Labor Relations Board and the Circuit Courts of Appeal that Pioneer is equally responsible and also responsive to this certification which the Board has issued at this time and on which these proceedings are resting.

There is no question in my mind of the fact that if this were a case before the jury that there is sufficient evidence before your Honor at the present time that you couldn't take it away from the jury, you would have to send it to the jury for decision. Such is the situation which rests before your Honor at the present time. Such being the evidence, I think your Honor is in no position to grant either of the motions at this time.

Trial Examiner Kent: Both motions will be denied without prejudice to later renewal.

I think there has been a *prima facie* case presented that should be met. I possibly unduly stressed the alter ego theory during the hearing, and I don't want counsel to be misled by anything I may have said there.

The Board has recently decided, a late decision, in Simmons Engineering Company. I believe it was decided on February 26, 1946. It is reported in 17 Labor Relations [1184] Reporter, 932. It seems to have considerable bearing on this case.

Mr. Collins: What is the name of the citation?

Trial Examiner Kent: 17 Labor Relations Reporter, 932; Simmons Engineering Company.

I haven't had an opportunity to consider the entire Board's decision. In general the Labor Relations Reporter Digest sets out the elements of the decision in proper fashion, and it is reliable; we use it a great deal.

But in this case the alter ego theory was not stressed and apparently the case holds that:

"The certification for exclusive representative of employees raises the presumption of its continuing the majority status, which is valid against the employer, a bona fide transferee of the plant involved, subsequent to the certification.

"The transferor in this case, a partnership, did not retain any interest in transferee, a corporation, because the shareholders of the transferee corporation had no prior interest in the transferor."

Now, at first glance that seems to be bad medicine for the respondent. I merely cite it at this time because I don't want to be later accused of unintentionally playing up the alter ego theory too strongly, and possibly misleading the respondent.

I might say that I checked that, because I thought I saw an expression on Mr. Nicoson's face which reminded me of that old story of the cat that had just drunk a pint of cream. I thought he had that in mind and was ready to lay it in my lap at the end of the hearing, so I then proceeded to do a little checking, and I found this case.

We might proceed.

Mr. Collins: Mr. Fred Rotter, please.

FRED ROTTER,

a witness called by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Collins:

Q. Mr. Rotter, I believe you have been sworn before; have you not? A. Yes.

Mr. Nicoson: But they do it again, though.

Q. (By Mr. Collins): You have testified in this case, called by the Board's attorney? A. I did.

Q. Now, calling you attention to some time the latter part of December, 1945, in my office, did you attend any meetings at which Mr. John Despol of the C.I.O. was there? A. I did.

Q. Would you state who was present? [1186]

A. John Despol, yourself, myself and Johnnie Levascos, Joseph Sanchez, Frank Doyle. I don't specifically recall the fourth party. There was a fourth party there I don't recall.

(Testimony of Fred Rotter.)

Q. Will you relate, as best you can, the conversation that occurred in that office, using as far as possible, "I said this" and "he said that" and "Collins said that"? Don't draw a conclusion. Don't say, "It seemed like," and so on. Use the expression "I heard" and "he said," to the best of your recollection.

A. Attempts were made to enter into a contract by Mr. Despol and Mr. Collins——

Mr. Nicoson: Object to that as stating a conclusion of the witness.

Q. (By Mr. Collins): Mr. Rotter, these attorneys on the other side of the table are going to object every time you say "attempts were made" or conclusions were drawn, and so on. You don't have to use the exact language, which I realize would be difficult. You have to try to start your sentences out with "I said this" or "Collins said that" or "Despol said that," and so on. Relate the conversations, not the conclusions you draw from it.

A. Mr. Collins questioned Mr. Despol in regard to the type of contract he had to offer. Mr. Despol produced a copy and after some mention was made of the various clauses in it, Mr. [1187] Collins mentioned the fact "That this may all be in vain."

He mentioned the fact, "There may not be a contract necessary."

Q. What did he say? What did Collins say? Did he say why it would be all in vain and no contract would be necessary?

A. That is right. He stated, Collins mentioned——

(Testimony of Fred Rotter.)

Q. Why did he say that? Did I say why it might be all in vain?

A. That there would not be an O'Keefe and Merritt Company.

Q. Did I mention any other company?

A. They were contemplating switching over or organizing a new firm under the name of Pioneer Electric Company.

Q. Was this a new firm or one that was in existence?

Mr. Nicoson: Just a minute. I am going to object to prompting the witness.

Mr. Collins: Just a moment. I withdraw the question.

Q. (By Mr. Collins): Was the Pioneer Electric Company operating in the O'Keefe and Merritt factory at that time? A. Yes.

Q. Did the Pioneer Electric Company have employees in the O'Keefe and Merritt factory at that time? A. Yes.

Q. You saw people working around there with Pioneer Electric buttons on, I suppose?

A. Yes. [1188]

Q. Now, when I told Mr. Despol that the O'Keefe and Merritt would very likely be taken over by the Pioneer Electric Company, what did he say?

A. He mentioned something to the effect that you were probably kidding him.

Q. Just relate the conversation as best you can.

A. He asked if—Despol asked if, addressing

(Testimony of Fred Rotter.)

himself to Collins, asked if he were not kidding him to evade an issue. Collins told him no, that negotiations were under way to continue on the aforementioned plan.

Q. What else did he say, if anything?

A. That he would continue on the—under the present conditions and contemplate affecting the O'Keefe and Merritt Company with a United Steelworkers contract.

Q. Did he say what he would do in the event that they changed the operation?

A. That would be the trouble of continuing on under the same set-up.

Q. Did he threaten to do anything to the O'Keefe and Merritt Company if they made the transfer?

Mr. Nicoson: Object to that as calling for a conclusion of the witness and also leading.

Q. (By Mr. Collins): Well, what did he say in addition? I will withdraw the question.

Mr. Nicoson: That is one of those questions that can't [1189] be cured either.

The Witness: Despol also mentioned in the course of the conversation that regardless of the contemplated change of the O'Keefe and Merritt Company, that the C.I.O. has been doing considerable organization work and felt that they should be the bargaining agent for the Pioneer as well as the O'Keefe and Merritt Company.

Q. (By Mr. Collins): What else did he say?

A. In mentioning the organization work, that

(Testimony of Fred Rotter.)

there was considerable expense involved in the organization work.

Q. What else was said? Did I say anything or did he say something or somebody else speak up? What happened after that?

A. You did mention something to the effect that the company, or the clients, my client would be willing to make some sort of adjustment regarding the organization expense. Mr. Despol did not accept or reject, just merely smiled.

Q. Yes. What other conversation took place? Is that all? Was there more conversation? What happened after that?

A. Mr. Despol continued to present the various terms of the contract.

Mr. Tyre: Objection, because that is a conclusion of the witness, and I ask that the answer be stricken.

Trial Examiner Kent: I think you might simplify your answer a little bit, and tell us the various things he did, [1190] and what he said in reference to that.

The Witness: Mr. Despol ignored the previous conversation regarding the expense and proceeded to continue arguing about the merits and the various clauses in the contract, which was temporarily argued back and forth between Mr. Collins and Mr. Despol, and in time the subject was again mentioned by Mr. Collins that there was really no necessity to continue on on contemplating this contract.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): What did Mr. Despol say to that?

A. He mentioned after a lapse of some time that he would make—mentioned something about making an additional appointment for some later date. Time was then elapsing and becoming very late in the afternoon.

Q. Was there anything—

Mr. Garrett: May I have the last reply read, please?

(Answer read.)

Mr. Garrett: Thank you.

Q. (By Mr. Collins): Did we have any discussion of money matters while he was there or you were there?

A. None other than the mention of Mr. Despol of the expense of organization work.

Q. And did he state whether he was willing to discuss money matters in front of the committee?

A. That I don't recall.

Q. Did you hear me state anything to the effect about [1191] taking up this organization expense with my clients?

A. That I testified that you did.

Q. Did I say I would take that up or did I say that my clients would take it up or that I would discuss it with my clients?

A. That you would discuss it with your clients.

Q. Now, then, I will show you Board's Exhibit 26, which has been introduced in evidence in this

(Testimony of Fred Rotter.)

case as a copy of the contract that the C.I.O. presented to the O'Keefe and Merritt Company, and I will ask you if you have ever seen this one or one similar to it. What I want to know is, is that substantially the same contract that Mr. Despol presented that evening or on other occasions?

A. The question again, please.

Q. Is this substantially the same contract that the C.I.O. presented to us in their bargaining negotiations?

A. The C.I.O. presented?

Q. Yes.

A. Mr. Despol presented?

Q. Yes. A. No.

Q. You do not recognize this contract?

A. Not as Mr. Despol having presented it.

Q. Do you recall my discussing with him the question of whether we would grant them maintenance of membership or a [1192] union shop? Do you know what the terms mean?

A. Yes.

Q. Do you recall any conversation about maintenance of membership or closed shops?

A. There was nothing mentioned about closed shop. Maintenance of membership was mentioned, regarding O'Keefe and Merritt, the remaining O'Keefe and Merritt employees.

Q. Do you recall whether or not I said to him whether or not we would agree to a maintenance of membership clause in the union contract with him?

A. That you did mention.

Q. Did I state I would agree or I would not agree to it?

(Testimony of Fred Rotter.)

Mr. Tyre: I am going to object, your Honor. These are all leading questions. 'This is Mr. Collins' witness. I suggest that Mr. Collins ask questions as though this were his own witness, and not put answers in the witness' mouth. I object to any further leading questions.

Mr. Collins: I submit, Mr. Trial Examiner, I inquired did I or did I not say this or say that. I don't think that is leading and suggestive.

Trial Examiner Kent: You what?

Mr. Collins: I asked him did I offer to give him maintenance of membership or did I not offer to give him maintenance of membership. I don't see anything leading about that. If it would suggest anything, it would suggest the [1193] negative as well as the positive.

Trial Examiner Kent: He may answer the question.

Mr. Tyre: I ask that this witness be asked questions as to what was said at the meeting and let the witness state what was said at the meeting instead of allowing Mr. Collins to have this witness state in Mr. Collins' language what was stated at this meeting. I think that is the proper way to question.

Mr. Collins: Mr. Trial Examiner——

Trial Examiner Kent: I think there is merit in counsel's objection. It might be better to follow the usual procedure and let the witness state.

Mr. Collins: I am thoroughly familiar with the rules of evidence, and I believe they should be followed explicitly. However, I am also familiar with

(Testimony of Fred Rotter.)

one of the rules of this Board, that there are no rules of evidence or procedure as followed in the State of California. However, even following those rules, I now submit that I now have the right to refresh this witness' memory. He has testified he does not even remember the contract as being the exact one.

Mr. Nicoson: Your statement whether or not you agreed certainly is not a proper one.

Mr. Collins: I didn't use the word agree.

Mr. Nicoson: Yes, you did use the word agree.

Mr. Collins: Very well. Then I will reframe the [1194] question.

Trial Examiner Kent: You may reframe the question.

Q. (By Mr. Collins): Was there anything said about maintenance of membership by myself?

A. Definitely.

Q. What did I say?

A. That maintenance of membership would be retained as far as the O'Keefe and Merritt employees were concerned.

Q. What do you mean by that answer?

A. That previous to the discussion of maintenance of membership it had been mentioned that the O'Keefe and Merritt Company would be dissolved or the work transferred to the Pioneer Electric Company, inferring at the time that there would not be a sufficient number of O'Keefe and Merritt employees remaining to other than guarantee maintenance of membership.

(Testimony of Fred Rotter.)

Q. Was there any mention of strikes and lock-outs? A. There was.

Q. What did I say about that?

A. Mr. Collins asked Mr. Despol whether any clause or assurance could be made to avoid any strikes or lockouts or any disturbances affecting production. Mr. Despol mentioned that the usual clauses would be inserted.

Q. Now, in this negotiation with Mr. Despol, did I state to him at any time whether or not we could accept his entire contract [1195] as handed to us?

The Witness: Read that question, please.

(Question read.)

A. You definitely stated more than once during the course of the evening or the meeting that the contract in its entirety could not be accepted under any circumstances.

Q. Did I or did I not state that certain parts of it were agreeable?

A. Numerous parts were definitely stated, numerous parts were agreeable.

Q. Now, then, Mr. Rotter, at the time of the election, to wit, on the 20th of November, 1945, did the O'Keefe and Merritt Company have any stove mounters, actually working as stove mounters?

A. No.

Trial Examiner Kent: What was that date?

Mr. Collins: November 20th, 1945.

Q. (By Mr. Collins): Does the Pioneer Electric Company at this time have stove mounters?

A. Yes.

(Testimony of Fred Rotter.)

Q. Did the employees of Service Incorporated appear upon the list of employees eligible to vote on November 20th? A. Yes.

Q. The employees of Service, Incorporated?

A. Yes. [1196]

Mr. Nicoson: Who are they?

Mr. Collins: Let me have that list.

Q. (By Mr. Collins): Will you state for the record who the Service Incorporated is or what it was at that time?

A. Service Incorporated was a separate firm consisting of approximately six or seven or possibly eight employees, and at the time they were handling our shipping. There was a question about the—rule out the question then. They appeared on the list, so, Mr. Collins, if there is any question on that.

Q. I will show you Board's Exhibit 12 and ask you if you see on there any of the people who were working for Service, Incorporated at that time. Well, were they permitted to vote?

A. They were on the list here. The letter is self explanatory on those.

Q. I will ask you about Len C. Leonard, did he vote?

A. I have no way of determining whether he voted or not.

Q. Did Frank Scavo vote?

Mr. Collins: I wish to point out for the record that the record at this point shows that four of them appeared to vote and their ballot was chal-

(Testimony of Fred Rotter.)

lenged, so far as you know actually it comes down to you don't know whether they voted or not. They were on this list.

A. I know they were challenged at the time, and there was a question brought up at that time about the tally between [1197] the C.I.O. and the A. F. of L., whether or not they should be included. I think it was determined between them that they would not be counted.

Mr. Collins: I see.

Mr. Tyre: I move that be stricken, if the court please, as stating a conclusion of the witness, what he thought later happened, not responsive to the question I think it is rather important, your Honor, that that matter be stricken at this time.

Trial Examiner Kent: I think it might be brought out in a little more detail.

Mr. Tyre: May I have the motion ruled upon?

Trial Examiner Kent: Yes, I will sustain the objection. The answer may be stricken.

Mr. Collins: Is counsel willing to stipulate that those votes were disqualified at the end of the election, those belonging to Service Incorporated who appeared to vote?

Mr. Nicoson: I think I am able to stipulate it indicates generally, wherever the letters ch. appear behind the name, that is our method of showing that that particular vote was challenged. As to whether all of them were challenged or not, or whether all of them even presented themselves, I could not go

(Testimony of Fred Rotter.)

that far, but I can stipulate that wherever the ch. appeared behind those names, for example, Frank Scavo, Clyde Sweeton, Jimmie M. Vick, and Ray H. Steen, each have the letters ch. behind them, and I will stipulate that they were challenged.

Mr. Collins: I will accept that stipulation.

Mr. Garrett: What do you mean by that, Mr. Nicoson? You mean that where the ch. appears on Board's Exhibit 12-B it indicates that a challenge was received by the Board's observer at the election, and that he indicated it on the payroll list by thereon writing the word ch. after the name of the person on the payroll list? [1199]

Mr. Nicoson: Without binding myself to the exact [copy illegible] I can say generally that is the thing that indicates to me, someone raised some question, I suppose, about the eligibility of those particular people. The general practice is that where anyone raises a question as to the eligibility we permit them to vote a challenged ballot. We do that by showing on the payroll or the check list that they have been challenged, and we give them a ballot, a secret ballot envelope, they go in the booth and mark the ballot, seal it in the small envelope marked secret ballot, and then we put it in a larger envelope and on the outside is put the name of the individual. I know of no reason why there was any departure from that practice here.

Mr. Collins: Mr. Rotter——

Mr. Garrett: Just a moment. There are eight

(Testimony of Fred Rotter.)

names appearing on Board's Exhibit 12-B in the section indicated to be the payroll of the Service Incorporated employees, four of them having a red mark after them and the pencil notation ch. Would that indicate that the other four did not appear to vote or can you tell by looking at that?

Mr. Nicoson: I think the indication is that those names——

Mr. Collins: I think I can clear this up.

Mr. Nicoson: ——behind which there is no mark is an indication that they did not present themselves for voting.

Mr. Garrett: Have you any way of ascertaining whether [1200] the four challenged ballots were actually counted or not?

Mr. Nicoson: Those four challenged ballots were not counted.

Mr. Garrett: How did that appear?

Mr. Nicoson: Wherever the challenges do not affect the outcome of the election, we do not count them. Wherever it is possible that the challenged ballots may effect the outcome of the election, they are opened and counted.

Mr. Collins: Then I take it that the four red names were challenged and their votes were not counted, on this general practice, is that right?

Trial Examiner Kent: I think for the purpose of clarity it might also appear that the eight names counsel have been talking about are the last eight names appearing on Board's Exhibit No. 12. I

(Testimony of Fred Rotter.)

don't believe the record shows that. It may help to——

Mr. Nicoson: Yes, and for further identification, right above these eight names about which we are now talking has been written in pencil the words "On payroll of Service, Inc." I am willing to stipulate that those words were written on there by Mrs. Phoenix of the Board, and that is written immediately above those eight names.

Mr. Collins: I will accept that stipulation.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Rotter, were any of those employees [1201] of Service Incorporated taken care of on the payroll of the O'Keefe and Merritt Company upon November 20th?

A. Taken care of on the O'Keefe and Merritt Company payroll?

Q. I will reframe the question. Were they on the O'Keefe and Merritt Company's payroll or on the Service Incorporated payroll?

A. On the Service Incorporated payroll.

Q. In other words, as head of the personnel department, you had nothing to do with keeping their hours or employing them in any way?

A. None whatever.

Q. You do not actually know whether they were ever employees of the Pioneer or not?

A. No, I do not.

Q. Do you know how they happened to get on that list? A. Yes, I do know that.

Q. How did they get on there?

(Testimony of Fred Rotter.)

A. I had them put on there questioning Mrs. Phoenix as to their eligibility of voting.

Q. I see. Very well.

Mr. Garrett: Can I have that last answer read?

(The answer was read.)

Mr. Garrett: What does that mean?

Mr. Collins: Well, let me ask him the next question. [1202]

Q. (By Mr. Collins): Are they working for O'Keefe and Merritt now, those people?

A. They are.

Q. So why did you want Mrs. Phoenix to let them vote?

A. Because I knew they were coming back to the O'Keefe and Merritt Company payroll and I wanted to determine whether their eligibility to determine their—they were eligible to determine their bargaining unit, their representative.

Q. Do I understand your testimony that those employees are now working for O'Keefe and Merritt?

A. They do.

Q. And that is part of the group that the Steelworkers are attempting to bargain for, is that true?

A. That is right.

Q. How long has it been since O'Keefe and Merritt Company has had any stove mounters working for it?

A. Since the middle of 1942.

Q. Don't they have any stove mounters working for them now?

A. No.

Q. Now, Mr. Rotter, did any representative of

(Testimony of Fred Rotter.)

the CIO or the Steelworkers ever appear and ask you for the right to bargain for the employees of Pioneer Electric Company? A. No.

Q. Did they ask anybody else connected with Pioneer, so [1203] far as you know, for that right?

A. They did not, so far as I know.

Q. Did the AFL ever ask you for anybody else, so far as you know, for the right to bargain for these employees? A. Yes.

Q. Now then, I believe you testified a moment ago as to the first meeting with Mr. Collins and Mr. Despol in Mr. Collins' office. Did you attend any further meetings?

A. I attended a subsequent meeting of possibly two to three weeks later.

Q. What happened at that meeting?

A. The same mention was made there at the time——

Mr. Tyre: Just a minute. May we have a better foundation laid for this meeting, who was there and when it was or where it was?

Mr. Collins: So the record will be clear about this, I am referring to the five meetings Mr. Despol testified to. That is all I am going to talk about at any time; one of the five meetings.

Q. (By Mr. Collins): Can you more closely ascertain the date of this second meeting you are now testifying you attended, Mr. Rotter?

A. The specific date, no. Sometime in the middle of January.

(Testimony of Fred Rotter.)

Q. Sometime the middle of January. Who was present at [1204] that meeting, so far as you can recall?

A. Mr. Collins, Despol, myself, Daley, Cunningham. There were two others; I don't recall the names.

Q. Well, relate the conversation or what transpired in that meeting, to the best of your recollection.

Mr. Tyre: Was this in Mr. Collins' office?

The Witness: In Mr. Collins' office, yes. The negotiations were again entered into on a general basis by Mr. Collins and Mr. Despol, with the four witnesses listening. The general terms of the contract were again discussed, gone over the second time, to determine which could be used or which could not be used.

Maintenance of membership was again brought up, mentioned by Mr. Collins that maintenance could be inserted. Sick leave clauses were extreme. Minor other paragraphs were discussed; some favorable toward the O'Keefe and Merritt Company and some favorable toward the United Steelworkers.

After he come to the point of discussing about rates, Mr. Despol mentioned there would be no discussion of rates mentioned among the witnesses. Again Mr. Collins informed Mr. Despol that he saw no sense in continuing these meetings due to the fact that there would not be sufficient number of employees to represent.

(Testimony of Fred Rotter.)

Mr. Despol mentioned, "Why do you say that?"

Mr. Collins answered, "The fact that there will be very [1205] few O'Keefe and Merritt employees remaining to make it worth your while."

Mr. Despol questioned Mr. Collins again in regard to what he meant by that.

Mr. Collins informed him that another company, contemplated transferring all production work into another firm. It was mentioned if another vote was to be authorized by the NLRB it would very likely sway the issue.

Again Mr. Despol mentioned the fact that that would have no bearing on the case, they were authorized representatives and having gone to the trouble and expense of doing this organizational work they would continue.

Mr. Collins informed him that he didn't see how he could have any right to continue, especially since the majority of the employees are favoring the AFL.

After further discussion there, Mr. Collins again mentioned to him, "Why mention the expense in the organization? As I mentioned before, I am willing to discuss the matter with my client and see if we can't reimburse you for what expense you have been involved in."

Mr. Despol again sort of smiled at the idea and did not commit himself one way or another. After further discussion of minor clauses in the contract, the meeting was adjourned.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): Did you ever take any part in the [1206] activity on behalf of either the CIO or the AFL in the O'Keefe and Merritt factory.

Mr. Nicoson: May I have that question read?

(The question was read.)

The Witness: Only once.

Q. (By Mr. Collins): What was that?

A. Two or three or four of the employees were interested in some membership cards. I had both union membership cards available. These boys mentioned about wanting a couple or three AFL membership cards.

Q. Did you have CIO cards there, too?

A. I did.

Q. Did anybody ask for CIO cards?

A. They did not.

Q. Did you ever tell anyone that they would be disciplined in any way if they refused to join either organization?

A. I did not.

Q. What did you tell them the company's attitude was or your attitude was about either one of these unions?

Mr. Nicoson: Objected to as assuming a fact not in evidence.

Mr. Collins: This is direct examination.

Q. (By Mr. Collins): Did you ever tell them anything about your opinions or the company's opinions regarding either union? [1207]

A. I did not.

(Testimony of Fred Rotter.)

Q. Do you know of any occasion when anyone was disciplined or otherwise lost any advantages by reason of joining either union? A. No.

Q. If there had been such a thing, would you know about it? A. Yes.

Q. Did you ever hear Mr. O'Keefe make a speech out there in the factory? A. Yes.

Q. Do you recall anything that was said in the speech?

Mr. Nicoson: Are we trying to impeach the witness?

Mr. Collins: No.

Mr. Nicoson: Then I object on the ground——

Mr. Collins: I withdraw the question.

Q. (By Mr. Collins): Did you receive any instructions from O'Keefe or from myself regarding the attitude you were to take concerning membership in either union? A. None whatever.

Mr. Collins: You may cross-examine.

Mr. Garrett: May we have the morning recess?

Trial Examiner Kent: Just a minute. I might offer as Respondent's exhibit next in order the two written motions that were handed to me at the opening of the hearing. I will also give you two copies for your files, Mr. Nicoson. [1208]

(The documents referred to were marked as Respondent's Exhibits Nos. 9 and 10, and were received in evidence.)

(Testimony of Fred Rotter.)

RESPONDENT'S EXHIBIT No. 9

United States of America
Before The National Labor Relations Board
Twenty-first Region
Case No. 21-C-2689

In the Matter of
O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.
and
UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., et
al, etc.

MOTION TO DISMISS

Comes now the Pioneer Electric Company, respondent in the above titled action, and requests that the complaint of the United Steelworkers of America be dismissed upon the following grounds:

1. Respondent, Pioneer Electric Company, was first organized in 1942, as a partnership. That it leased a portion of the factory of O'Keefe & Merritt Co., a corporation, and has either maintained that lease or other leases in full force and effect from it until now.

2. That it has operated as a partnership in the same building with the O'Keefe & Merritt Co. from its inception and that the O'Keefe & Merritt Co. has maintained its own identity as a corporation from then until now. This is not a case of where one company sells out to another. Both are still in business.

(Testimony of Fred Rotter.)

3. That at the time of the election on November 20, 1945, both O'Keefe & Merritt Co. and Pioneer Electric Company had employees and were operating as separate legal entities. That at the present time they are both still operating as separate legal entities, both having employees. That the Pioneer Electric Company maintained its own records for all its employees, makes its own Social Security deductions and employer contributions, has its own Workmen's Compensation insurance policies, pays its own Federal Income Tax and State Income Tax, maintains its own office force entirely separate and apart from its landlord and prime contractor, O'Keefe & Merritt Co.

4. Does and did work for other companies besides the O'Keefe & Merritt Co. Does have and did have other types of work in addition to that given to it by O'Keefe & Merritt Co.

5. Is, in every way, a separate legal entity.

6. That the employees of the Pioneer Electric Company did not have an opportunity to vote at the election referred to in these proceedings; that the employees of the Service, Inc., likewise, did not have an opportunity to vote in the election referred to in these proceedings, although a claim is now being made by the United Steelworkers of America to bargain for both of these groups of workers.

7. That the Pioneer Electric Company has a contract with the various A. F. of L. Locals and a contract with the O'Keefe & Merritt Co. That it is a separate legal entity. That the National Labor

(Testimony of Fred Rotter.)

Relations Board, under the National Labor Relations Act, has no jurisdiction to abrogate contracts heretofore entered into by the Pioneer Electric Co.

Wherefore, Pioneer Electric Company moves that this proceeding be dismissed so far as it is concerned.

Respectfully submitted,

/s/ CECIL W. COLLINS

Attorney for Pioneer Electric
Company.

[Endorsed]: Filed March 26, 1946.

RESPONDENT'S EXHIBIT No. 10

United States of America

Before The National Labor Relations Board

Twenty-first Region

Case No. 21-C-2689

In the Matter of

O'KEEFE AND MERRITT MANUFACTURING
COMPANY, et al, etc.

and

UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., et
al, etc.

MOTION TO DISMISS

Comes now the O'Keefe and Merritt Manufacturing Company, respondent in the above titled action, and moves the National Labor Relations Board to dismiss the complaint of the United Steelworkers of America on the following grounds:

(Testimony of Fred Rotter.)

1. The evidence clearly shows that Mr. Cecil W. Collins was the authorized agent of the O'Keefe and Merritt Manufacturing Company for the purpose of bargaining with and entering into a contract with the United Steelworkers of America.

2. That Mr. Collins did bargain with the United Steelworkers of America on seven different occasions, ranging over a period of approximately forty-five days, wherein the only substantial difference between the parties was on the question of Union security, the employer offering maintenance of membership and the Union asking for a union shop.

3. That the employer likewise offered to pay 20% higher than the going rate in the stove industry in this area and not to take away any advantages that its employees enjoyed prior to the signing of a contemplated contract.

4. That, thereafter there were at least two telephone calls wherein additional requests for bargaining were made and the employer agreed to continue bargaining. That the employer is still bargaining and will bargain.

5. That the first demand made by the employer to do any bargaining was some time along the latter part of December. That the employer did bargain with the union all through the month of January and during the month of February. These charges were filed by the union. It is the union that has refused to bargain, not the employer.

6. That the employer, in addition to bargaining in good faith, has made an offer in Court to not

(Testimony of Fred Rotter.)

only bargain but to actually sign a contract embodying those clauses which are agreeable to both parties. (See record.) All but two or three clauses are agreed upon. (See record of John Despol on cross-examination.) This is more than an employer is legally bound to do. The Act merely provides that the employer must bargain in good faith. We have now proven our good faith by offering to sign such a contract.

7. That the manufacture of gas ranges by the Pioneer Electric Company was in the contemplation of the parties long before any labor difficulties or election.

Wherefore, respondent moves that the action be dismissed as moot.

Respectfully submitted,

/s/ CECIL W. COLLINS

Attorney for O'Keefe and
Merritt Manufacturing
Company.

[Endorsed]: Filed March 26, 1946.

Mr. Nicoson: Are we going to take a recess or do you want to go ahead?

Trial Examiner Kent: We might take a recess for five minutes, yes.

(A short recess was taken.)

Trial Examiner Kent: On the record.

Mr. Collins: I have one more question, Mr. Trial Examiner. I see I inadvertently pointed out the

(Testimony of Fred Rotter.)

American Federation of Labor contract, being Exhibit No. 26, to which this witness replied he had not seen that contract, presented by Mr. Despol.

Q. (By Mr. Collins): Now, Mr. Rotter, I will show you Board's Exhibit No. 10, being the Steelworkers' contract, CIO. Have you ever seen that contract? A. Yes.

Q. Now, this is the contract that you are referring to that you were negotiating about in my office on the two meetings you attended?

A. That is right.

Q. Now then, if you will look through that contract and state which clauses were agreed to by myself and the company and which were not, if you can remember them. [1209]

A. Section 1, A and B. C was not wholly agreed to.

Q. What was said in connection with C? What else did we want on there, if you can recall?

A. I recall that statement regarding C. It was accepted.

Q. It was accepted. Very well. Proceed. Union Security.

A. Union Security of Section—Union Security, Section 1, was agreed to; also No. 2.

Q. Proceed. Checkoff?

A. Section 4 regarding the Checkoff was not agreed upon.

Q. Section 4? A. (Indicating.)

Q. Oh. Was there any mention made of the

(Testimony of Fred Rotter.)

checkoff, if the maintenance of membership was agreeable?

A. It was definitely mentioned that—by Mr. Collins that maintenance of membership was agreeable.

Q. In the event the maintenance of membership was agreeable with the union, was there anything said about the checkoff? Would we or would we not give them the checkoff?

A. If the maintenance of membership was agreeable to Mr. Despol or the United Steelworkers, that the checkoff would also be agreeable.

Q. Proceed. Hours of Work.

A. The Hours of Work were agreeable as long as the United Steelworkers assisted in every way possible that the strikes or work stoppages would not involve or jeopardize production. [1210]

Q. Proceed. Wages. What wages were agreed upon or offered them?

A. As stated, Mr. Collins was going to submit a wage schedule to compare with a wage schedule Mr. Despol had in mind, but other than that Mr. Despol refused to present or bring up the matter of wages in the presence of the witnesses.

Mr. Tyre: Will you read that answer?

(The answer was read.)

Q. (By Mr. Collins): Was there anything said about the Gaffers & Sattler rate?

A. There was a mention made of Gaffers and Sattler.

(Testimony of Fred Rotter.)

Q. What was said about it, and who said it?

A. Mr. Collins mentioned that "Inasmuch as we are range manufacturers we would have to stay within a range rate of other manufacturers of like products."

Q. Was anything said about Wedgewood?

A. Wedgewood and Western Stove were also mentioned.

Q. Was anything said about any other benefits being taken away from the employees or retaining, even though we signed a contract embodying the going rate in the stove industry?

A. The going rates were to prevail as long as they were within reason of the request of Mr. Despol's contract. And in conjunction with the going rates of the area of like manufacturers; and that no other benefits of any kind would in any way be jeopardized. [1211]

Q. Do you know, as the payroll officer in charge of personnel for the Pioneer Electric Company, now, whether or not the rate the employees are now receiving is higher than other rates in the stove industry in this area?

A. Whether or not they are higher?

Q. Yes.

A. They are about on an equal basis.

Q. In addition to this wage rate, do they get other advantages that are of a financial nature?

A. Definitely other financial benefits are there in the form of Christmas funds, profit sharing plan, employees' profit sharing plan, contributions made by the company alone.

(Testimony of Fred Rotter.)

Q. What percentage of these contributions you are discussing, what percentage do they bear to the wages of the employees?

A. These additional ones?

Q. Would you say it was as much as 15 or 20 per cent?

A. Anywhere from 22 to 23½ per cent.

Q. Now your testimony would be they get the going rate in the stove industry, generally speaking, and in addition to that they receive 20 per cent in addition to these other advantages?

A. Yes.

Q. 20 to 22 per cent? A. Yes. [1212]

Q. Was there any agreement on the night shift bonus? A. There was.

Q. Was there any agreement on holidays?

A. Definitely.

Q. Was there any agreement on seniority?

A. All rights agreed to on the seniority clause.

Q. Was there any agreement about vacations?

A. Some agreement; not fully to the request of Mr. Despol.

Q. What was the offer on vacations?

A. Offer of one week's vacation with one year's continuous service.

Q. What about more than one year's service?

A. Two weeks' vacation for more than one year of service was still under discussion.

Q. What offer was made for employees with more than five years or five years?

A. There was a mention made there of enclos-

(Testimony of Fred Rotter.)

ing two weeks' vacation for employees of five years and more.

Q. Grievance procedure, was there any agreement on that?

A. Full accord reached on the grievance procedure.

Q. Grievance records.

A. Grievance records were discussed at length, involving considerable detail work in the personnel department but conceded to.

Q. We agreed to that? A. Yes. [1213]

Q. Discharge Cases, the method of handling people that were unfairly discharged, was agreement reached on that?

A. There was favorable agreement.

Q. Recalled Employment, did we agree to that clause? A. We did.

Q. Benefits and Privileges, we agreed we would not take anything away from the people?

A. That is right.

Q. Leave of Absence?

A. Was granted in every respect as far as sickness or other reasons.

Q. The section on veterans, what happened about veterans? A. Conceded to.

Q. Veterans Committee?

A. Was agreed upon.

Q. Military Leave. A. Was granted.

Q. Group Insurance.

A. Was discussed and granted.

Q. Safety and Health.

A. Was agreed upon.

(Testimony of Fred Rotter.)

Q. Miscellaneous, the request the union have a bulletin board, did we agree to that?

A. We did.

Q. Miscellaneous Continued, did we agree to that? [1214] A. Yes.

Q. Sick Leave, what was done about sick leave?

A. Sick Leave was not agreed upon to their abnormal request of too long a period of sick leave requested.

Q. Was the matter still subject to negotiation?

A. Yes.

Q. Hours of Work, Continued.

A. Duplication of another——

Q. Speak your answer out so the reporter can get it.

A. Continuation of former paragraph there regarding hours of work was agreed upon, providing no unnecessary strikes or stoppage affect the production.

Q. Did we agree on the question of terminating the contract? A. We did.

Q. Well, one more question. Did I, at any time, tell Mr. Despol that I wouldn't discuss the terms of the contract with him any longer?

A. No, you did not tell him that.

Q. Did I ever tell Mr. Conway I would no longer discuss the terms of the contract with him?

Mr. Tyre: Objection. It assumes a fact that this witness hasn't testified to, that is, Mr. Conway's presence at any time of these meetings.

(Testimony of Fred Rotter.)

Q. (By Mr. Collins): Was Mr. Conway present at any meeting [1215] you attended, Mr. Jerry Conway? A. Yes, I recall he was.

Q. Did I at any time tell Mr. Conway I would no longer continue to discuss the terms of the contract and bargain with him?

A. You did not at any time mention that.

Mr. Collins: You may cross-examine.

Cross-Examination

By Mr. Nicoson:

Q. I believe you testified the other day, Mr. Rotter, and also during the course of your present examination that you are now the personnel manager of Pioneer Electric, or some other such title; is that correct? A. Yes.

Q. What is that title?

A. Personnel manager of the Pioneer Electric.

Q. It is also a fact you became such on the 4th day of February this year; is that correct?

A. Correct.

Q. Prior to that time, you held some similar position with the O'Keefe and Merritt Company?

A. Correct.

Q. Is that correct? A. Correct.

Q. Directly after V-J Day, you recall the occasion of the cancellation of the Army contracts?

A. Vaguely, due to the fact it affected the number of employees—affected the employees in the factory and we had instructions to dismiss some.

(Testimony of Fred Rotter.)

Q. When you speak of employees, are you speaking only of the O'Keefe and Merritt or are you speaking also of Pioneer?

A. O'Keefe and Merritt.

Q. Do you know whether or not the Pioneer Electric Company made reduction right after V-J Day or so? A. They made some reduction.

Q. Could you tell us about how much.

A. I would not. That would be guess work.

Q. Can you tell us how many employees of Pioneer Electric Company there were, if any, on the day of the election, which was November 20th?

A. Anywhere from possibly four to a dozen.

Q. Four to a dozen. And do you know the type of work those employees were doing?

A. No, I do not.

Q. You couldn't say whether they were largely clerical or something else? A. No, sir.

Q. Could you tell us if they were employed out in the plant or in the office?

A. No, I couldn't, because terminations and inventories and everything else, anyone just in observance couldn't tell [1217] which they were connected with, whether office or production.

Q. Do you know whether or not Pioneer was doing any work of any kind at that time?

A. Yes.

Q. What were they doing?

A. I assume they were doing some work by the fact that they were still having rollers and staters coming through our pregnation department.

(Testimony of Fred Rotter.)

Q. At the time of the election, this wall out there had been taken out, is that right?

A. At the time of the election?

Q. Yes.

A. Thereabouts somewhere; sometime after that.

Q. Now, let's go back over this service employees department again. It is a fact, is it not, that you submitted those names upon Board's 12-B because the company felt they should be eligible to vote in the election? Isn't that correct? A. Yes.

Q. I think you said the reason the company felt that was because you expected to transfer them back on the O'Keefe and Merritt payroll shortly thereafter. A. Yes.

Q. Or perhaps it was in the process of being transferred?

A. No, we contemplated it the first of the year.

Q. Now, on February 4th, when you became personnel manager or labor relations man—was it personnel? A. Personnel, yes.

Q. For Pioneer, did the employees of the O'Keefe and Merritt just go over on the Pioneer payroll? Is that about the way it happened?

A. We set up a whole new payroll there, a check register and everything else.

Q. In other words, you took the names off the O'Keefe and Merritt payroll and put them over on the Pioneer payroll; is that about right?

A. That is about the substance of it.

Q. Did you receive from the employees any

(Testimony of Fred Rotter.)

applications for employment by the Pioneer Company? A. I beg your pardon?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: No.

Mr. Collins: Read the question. I don't believe I understand the question.

(The question was read.)

Q. (By Mr. Nicoson): That is, I am speaking now of February 4th when you made this transfer over. A. Yes.

Mr. Collins: From the employees? [1219]

Mr. Nicoson: Yes, of O'Keefe and Merritt, when they went over to Pioneer.

Mr. Collins: You mean they asked for work there or filled out some kind of a questionnaire or something?

Mr. Nicoson: Yes.

Mr. Collins: I move the answer be stricken on the ground the question itself is vague. I will ask the counsel to reframe the question.

Mr. Nicoson: He understood the question.

Trial Examiner Kent: The record may remain. The witness apparently understood it. I think it has been answered.

Of course, Mr. Witness, I don't know whether you have been here during the hearing. I don't think you have. At any time a witness doesn't understand a question he is at liberty to ask to have it explained.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): Now, when was it you attended the first of these meetings where Mr. Collins and Mr. Despol and the others were present?

A. I don't exactly remember the date. It was sometime the last part of December.

Q. Did you attend any meetings in January at which Mr. Despol and Mr. Collins and others were present? A. One.

Q. When was that meeting? [1220]

A. I don't recall the specific date. There somewhere between the 9th and 16th of January.

Q. Was that one of the occasions when Mr. Collins said that there were arrangements being made to have some other company take over O'Keefe and Merritt? A. Yes.

Q. Did Mr. Collins tell Mr. Despol or Mr. Conway at that time that they had already signed a contract with the Pioneer Electric Company?

A. No.

Mr. Collins: Just a moment. I object to the form of that question as assuming a fact not in evidence and being ambiguous. What sort of a contract do you mean with the Pioneer Electric Company?

Mr. Nicoson: In evidence as Board's Exhibit——

Mr. Collins: You mean a contract with O'Keefe and Merritt with the Pioneer?

Mr. Nicoson: The Pioneer.

Mr. Collins: I move the answer be stricken on the ground it doesn't tend to prove or disprove anything at issue in this case. The evidence shows

(Testimony of Fred Rotter.)

that O'Keefe and Merritt continued to bargain and continued to have employees whether or not they were under any duty to disclose to Mr. Despol that they had signed a lease of their factory, other than to indicate as is the testimony there was some [1221] contemplation of that in prospect. I don't see where that proves anything.

Mr. Nicoson: Your Honor, my position is quite clear and I think it is also obvious. At the time he was telling that they were contemplating transferring these things over to Pioneer, they had already signed a contract to do so, just a matter of the question of the time in putting the thing into execution.

Trial Examiner Kent: The record may remain. I will overrule the objection.

Q. (By Mr. Nicoson): Do you recall during the discussions about the contract that Mr. Collins told Mr. Despol with respect to the Christmas bonus that he could not make that part of the contract, because that came out of the profits of the company? Isn't that right? A. That is right.

Mr. Nicoson: That is all.

Mr. Collins: Mr. Rotter,—

Mr. Tyre: May we have further cross-examination?

Mr. Collins: Oh, yes.

Mr. Garrett: Before the further cross-examination, can I have the last question and answer read to me?

(The record was read.)

(Testimony of Fred Rotter.)

Mr. Garrett: Thank you.

Q. (By Mr. Tyre): Mr. Rotter, when was it that you gave [1222] these three or four employees

A. F. of L. cards?

A. I don't recall the date, whether it was December or January.

Q. That is December of 1945?

A. 1945 or January of 1946.

Q. Where did this incident take place?

A. In my office.

Q. And who were those employees?

A. It was Mr. McNinch, Mr. Jack Miles, Mr. Graham. Is that three or four? There were four or five, I don't recall the other two.

Q. What time of the day was this?

A. Either during the morning or afternoon rest period or following the rest period.

Q. Were these people Pioneer Electric Company or O'Keefe and Merritt employees at that time?

A. O'Keefe and Merritt.

Q. And are these employees now Pioneer Electric Company employees? A. All but one.

Q. Which one is that? A. Jack Miles.

Q. How many cards did you give to each of them?

A. Not more than two or three apiece, didn't have a large enough stock to—— [1223]

Mr. Tyre: Will you read the last part of that answer?

(The answer was read.)

(Testimony of Fred Rotter.)

The Witness: To work supplying applications at random.

Q. (By Mr. Tyre): How many more cards did you have there?

A. Not more than one or two.

Q. After you had given out these?

A. That is right.

Q. Mr. Collins asked you a number of questions about Board's Exhibit No. 10, which was the proposed CIO contract. You testified what was agreed to and what was not agreed to. At which meeting were you referring to when you testified concerning those various conversations?

A. The first meeting the latter part of January we discussed them at random, and Mr. Collins attempted to bring out a few questionable clauses intending to take them into consideration and be more specific in his commitment in the following meetings. In the following meeting some were agreed upon and some were not, that is, some additional were agreed upon.

Q. Is it your testimony that these various and lengthy conversations as to what was agreed on and what was not agreed to, and Mr. Collins showed you Board's Exhibit No. 10, those were statements made at the meeting in January of 1946?

A. Some in January and some in December.

Q. So when you testified as to what Mr. Collins had agreed [1224] to and what he had discussed with Mr. Despol, some of that was at the first meeting you attended and some at the meeting later in January that you attended?

A. Yes.

(Testimony of Fred Rotter.)

Q. Was Mr. Conway at the first meeting that you attended?

A. I don't think he was. Whether he was at the first or second I can't specifically say. I think it was the second.

Q. Wasn't he at both meetings you attended?

Mr. Collins: Objected to as having been asked and answered. The witness has testified that he does not think so, to the best of his recollection.

Mr. Tyre: I think he is trying to recall.

The Witness: I am trying to, but I am not very successful at it.

Trial Examiner Kent: He may answer.

The Witness: I can't place any specific incident there that will freshen my memory.

Q. (By Mr. Tyre): You don't know whether he was there or not, is that your testimony?

A. At both meetings.

Q. You don't remember whether he was present at both meetings? A. That is right.

Q. Do you recall Mr. Despol stating to Mr. Collins that United Steelworkers of America were asking for 25 cents per [1225] hour increase of wages?

The Witness: Will you read the first part of that?

(The question was read.)

The Witness: Both at that time and various other times.

Q. (By Mr. Tyre): Just is that answer yes or no? A. Yes.

Q. When did you hear him make that statement? A. The first meeting.

(Testimony of Fred Rotter.)

Q. Did he also make it at the second meeting?

A. I don't recall.

Q. I think it is your testimony that Mr. Despol had handed Mr. Collins a copy of the Steelworkers' proposed contract at the first meeting you attended, is that right? A. Yes.

Q. Do you recall Mr. Collins telling Mr. Despol that he had not seen that contract before and he would like to look it over? A. No.

Q. Before he negotiated on it? A. No.

Q. Were you present at the meeting in Mr. Collins' office when late in the meeting a lady client of Mr. Collins' came into the office?

Mr. Collins: Objected to as immaterial, not tending to prove or disprove anything at issue. [1226]

The Witness: That I could not remember.

Trial Examiner Kent: The record may remain.

Mr. Tyre: What?

Trial Examiner Kent: I said the record might remain.

Q. (By Mr. Tyre): You don't recall them being present at such a meeting?

A. Whether it was the meeting with Mr. Despol or not I don't recall. I remember having been in his office around or about that time when a lady did call. Whether it was at Despol's meeting or not I don't recall.

Q. Were you present at a meeting in Mr. Collins' office where Mr. Despol was present about January 3, 1946?

Mr. Collins: Objected to as having been asked

(Testimony of Fred Rotter.)

and answered. The witness has testified he does not remember the exact dates.

Trial Examiner Kent: What is the purpose?

Mr. Tyre: Cross-examination. He has said he attended two meetings. I am trying to specify the dates.

Trial Examiner Kent: He may answer that.

The Witness: I don't recall the specific dates.

Q. (By Mr. Tyre): I think you testified before that you thought you attended the second meeting somewhere between the 9th and 16th of January. I ask you now whether or not you are sure it was that late or whether it could have been the 3rd of January. [1227]

A. It might have been earlier.

Q. You are sure that Mr. Conway was present at the second meeting that you attended, is that right?

A. I am not sure whether it is the first or the second.

Q. Do you recall a meeting where Mr. Despol requested Mr. Collins to provide him with written proposals that the company wanted to make?

A. The first part of that question, please.

(The question was read.)

A. Written proposals of what?

Q. You don't understand the question?

A. Written proposals of what?

Q. The company's proposed provisions for the Steelworkers contract.

A. None other than regarding rates.

(Testimony of Fred Rotter.)

Q. Mr. Despol asked Mr. Collins to put in writing the company proposal as to rates, is that right?

A. He didn't ask Mr. Collins to do so.

Q. Your testimony is, then, that at none of the meetings that you attended did Mr. Despol ask for any written proposals?

Mr. Collins: Objected to as assuming a fact not in evidence. The witness does not testify that such a conversation was not had. He has testified that he does not recall such a conversation.

Mr. Tyre: I will withdraw the question. [1228]

Trial Examiner Kent: He may answer.

Mr. Tyre: That is all right, withdraw it. That is all.

Mr. Collins: Mr. Rotter——

Mr. Reed: Is this redirect, Mr. Examiner?

Mr. Collins: Yes, I wanted to clear up something.

Trial Examiner Kent: Did you want to question the witness?

Mr. Collins: Oh, excuse me.

Trial Examiner Kent: We might take a recess for a minute or two.

(A short recess was taken.)

Trial Examiner Kent: All right, Mr. Reed, you may proceed.

Q. (By Mr. Reed): Are the employment records of the Pioneer Electric Company separate and apart from the records of the O'Keefe and Merritt Corporation? A. Yes, they are.

(Testimony of Fred Rotter.)

Q. Are they separate in location as well as in make-up? A. Not as yet.

Q. Not as yet. Regarding those records and the terminating of the group of employees we are concerned with here from the O'Keefe and Merritt Company and the hiring of those employees by the Pioneer Electric Company, do those records show a transfer or do they show that termination took place for those employees by O'Keefe and Merritt and do those records [1229] show that those employees are new hires upon the records of the Pioneer Electric?

A. They do not show that they are new hires, just a physical transfer of the file, with the general assumption of all involved with the records knowing that they are Pioneer employees. The seniority rights are continuing and obviously we didn't want to clutter it up to go into the detailed work there of making the mention on the application as to their transfer taking place.

Q. Was the reason for that the agreement entered into by and between the O'Keefe and Merritt and the Pioneer Electric——

A. Primarily—pardon me.

Q. ——guaranteeing a continuance of their seniority and other benefits.

A. The main and primary reason for it.

Q. At one place in your testimony you referred to the taking over of O'Keefe and Merritt by the Pioneer Electric Company. Did you mean that literally or did you mean the taking over of the

(Testimony of Fred Rotter.)

manufacturing of certain products of the O'Keefe and Merritt? A. Manufacturing of products.

Q. In other words, your statement that Pioneer Electric had taken over O'Keefe and Merritt was not a fully explanation of the thought you had in mind? A. No. [1230]

Mr. Reed: That is all.

Redirect Examination

By Mr. Collins:

Q. Mr. Rotter, did you ever have any other cards besides those three that you mentioned on cross-examination? A. No.

Q. Who gave you those cards?

A. No one—I received them from representatives of the A. F. of L.

Q. Did you have any C.I.O. cards?

A. I did.

Q. How many C.I.O. cards did you have?

A. Anywhere from 10 to 20 of them.

Q. Where did you keep them?

A. In the desk drawer.

Q. Did you hand those out to just anybody who came in looking for a job, or did you have to have people ask you for them?

A. People asked me for them.

Q. And the three that you gave them to are the only three that asked you for them? A. Yes.

Q. Now, why did you not require applications from the employees of O'Keefe and Merritt when

(Testimony of Fred Rotter.)

they went to work for the Pioneer Electric Company? [1231]

A. Too much detail involved in signing up new applications regarding around 400 employees, much more expedient to make the physical transfer and observations of the employees transfer to Pioneer.

Q. You don't remember whether or not the wall was torn down between O'Keefe and Merritt and Pioneer Electric at the time of the election, do you?

A. I don't recall the specific date that wall was torn down.

Q. Was it made clear in these negotiations between myself and Mr. Despol or Mr. Conway that I was bargaining merely for the employees of O'Keefe and Merritt Company? A. Yes.

Q. And was the statement made to him to the effect that the employees in the factory department were very likely going to work for the Pioneer Electric Company?

A. The second meeting emphasis was strongly mentioned.

Mr. Collins: That is all the redirect. Recross-examination.

Recross-Examination

By Mr. Nicoson:

Q. In answer to Mr. Reed's question you said that the Pioneer was merely taking over the manufacturing and production of O'Keefe and Merritt.

A. That is right.

(Testimony of Fred Rotter.)

Q. Is that a fair resume of your statements?

A. That is right. [1232]

Q. Do you know whether or not there was any substantial difference in the manufacturing procedure after Pioneer took over than there was when O'Keefe and Merritt operated up to February 4th?

A. Not immediately.

Q. Has there been since that time?

A. Minor.

Q. But no substantial difference?

A. No substantial.

Q. In other words, the manufacturing business of O'Keefe and Merritt prior to February 4th is substantially being performed by the Pioneer at the present time, is that correct? A. Yes.

Q. And in the same location that O'Keefe operated? A. Yes.

Q. The same products are being made?

A. Yes.

Mr. Nicoson: That is all.

Q. (By Mr. Reed): Do you know whether or not O'Keefe and Merritt were actually in production upon products that were to be manufactured by Pioneer Electric under the lease that was signed between the two companies prior to the time of the signing of that contract? In short words, were O'Keefe and Merritt actually manufacturing any of the products which [1233] were to be manufactured by Pioneer Electric? That is, at the time that this deal was made.

A. Not a completed product. They were fabricating parts. [1234]

(Testimony of Fred Rotter.)

Q. They were fabricating parts. So that in answer to a question that you had put to you by Mr. Nicoson, changes were not apparent to you upon the manufacturing of those parts insofar as as the way that the manufacturing was done by Pioneer Electric as against the way it was being performed by O'Keefe and Merritt?

Mr. Nicoson: I think I am going to have to object to that question as being ambiguous.

Mr. Reed: I will state the question differently.

Q. (By Mr. Reed): Are you a production man? A. I am not.

Q. Would you recognize any particular changes in production methods that might occur as between the way those products or parts were being manufactured by one company as against another company? A. I would not.

Mr. Reed: That is all.

Redirect Examination

By Mr. Collins:

Q. Mr. Roter, O'Keefe and Merritt were not making gas ranges at that time, were they?

A. Not the competed product.

Q. Is Pioneer making gas ranges?

A. They are now.

Q. Was Pioneer making generators at the time that you have testified to? [1235] A. Yes.

Q. O'Keefe and Merritt were not making generators, were they? A. No.

Mr. Collins: That is all.

(Testimony of Fred Rotter.)

Recross-Examination

By Mr. Garrett:

Q. Now, Mr. Rotter, at whose request did you prepare the payroll lists which are in evidence as Board's Exhibit 12-B?

A. At a general request of Mr. Durant. May I change that? It was not a general request, a statement of fact mentioned to all employees.

Mr. Collins: Mr. Rotter, do you know what 12-B is?

Q. (By Mr. Garrett): That is the exhibit that we were looking at on which we referred to those challenges on the Service Incorporated employees.

A. I am confused on that. I want to back track there. Will you read me his question?

(Question read as follows: Now, Mr. Rotter, at whose request did you prepare the payroll lists which are in evidence as Board's Exhibit 12-B?)

A. At the request of Mrs. Phoenix of the National Labor Relations Board.

Mr. Nicoson: Let the record show he has Exhibit 12-A before him. [1236]

Q. (By Mr. Garrett): Was that request made direct to you or to you through Mr. Durant?

A. That was made direct through me.

Q. Here at the offices of the Board?

A. At the office of the Board, and also through telephone conversation with Mrs. Phoenix.

(Testimony of Fred Rotter.)

Q. You talked to her on the phone as well as meeting her here on the two occasions when there were meetings; is that correct? A. Yes.

Q. You were here at the first meeting when the election was generally discussed and the unit?

A. I think that was the first meeting.

Q. Yes. A. I was here.

Q. You were here at some subsequent meeting at which there was a stipulation signed; is that right? A. That is right.

Q. In addition to that you had various phone conversations with her? A. One or two.

Q. One or two. Did they precede the meetings or follow them? A. Followed.

Q. Did the preparation of this list of voters precede or [1237] follow the meetings here at the Board?

A. The first list or one list—whether it is the same or not I don't recall—followed the first meeting. And the final list followed the second meeting.

Q. So there were two lists prepared; is that correct? A. I think so.

Mr. Garrett: If your Honor please, I notice the hour of 12:00 o'clock has arrived.

Trial Examiner Kent: Yes. We will take a recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1238]

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: You may proceed.

Mr. Collins: Mr. Rotter, would you take the stand, please? Or are we through with Mr. Rotter?

Mr. Garrett: No. I had him on cross-examination.

This is my first cross-examination. All the other parties have cross-examined and there has been re-direct and recross, and everything. But just before the adjournment was the first time I could make myself heard.

FRED ROTTER

called as a witness by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Garrett:

Q. How come there were two lists prepared, Mr. Rotter?

A. The second list was supposed to have a more authentic list including new employees and excluding terminated employees.

Q. Now, go back for a moment to these membership applications in the A.F.L. and C.I.O. unions that you had. Did any body tell you, Mr. Rotter, to secure those application cards?

A. No one told me.

Q. Did anybody tell you to keep them in your office? [1239] A. No.

Q. How did you happen to do it?

(Testimony of Fred Rotter.)

A. More through coincidence, I think, thinking we might expedite matters.

Q. That was your own idea; was it?

A. Yes.

Q. All right. Now, getting back to these lists, Mr. Rotter, were they prepared under your direction? A. Yes.

Q. By your clerical help, I presume?

A. That is right.

Q. Were they prepared from the payroll records as they existed at the time each list was prepared?

A. Yes.

Q. How are those payroll records kept, in book or card form?

A. Both. Clock card forms and time checked against the clock cards to verify the length of time each employee has accumulated in a week. The check register is then made up, to obtain the amount of hours and earnings that the men were paid.

Q. Do you use a set of time clocks that punches the employees' time cards for use in connection with the I.B.M. machines? A. We do.

Q. And is the time taken off on the cards or into book sheets?

A. I don't quite follow your question. [1240]

Q. You run these cards through the I.B.M. machines, the cards the employees take to the clocks and punch, and you get the employees' time that way, is that correct? A. That is right.

Q. And you also get the distribution of it for your cost accounting and all that sort of thing that way? A. That is right.

(Testimony of Fred Rotter.)

Q. Now, in connection with the employees' compensation, and only that, after the time is taken off the cards by the I.B.M. machines, is it put on a system of cards, a system of ledger sheets, or on a check record?

A. Checked first against the master weekly clock card to determine that all job cards have been turned in for a specific period of time, and then accumulated on a weekly basis and recorded on a weekly run-off as well as a check register run-off.

Q. Now, specifically, what records were those lists taken from that you gave Mrs. Phoenix on these two occasions?

A. From an additional record which is termed as a rate card, and then checked back against the specific payroll period.

Q. In other words, you took the information which you gave Mrs. Phoenix off of cards which had been made after the information on these employees' clock cards was correlated on the machines, and run off onto the weekly run-off and the [1241] check register, isn't that right?

A. Checked against the run-off of the weekly check register, yes.

Q. Well, when the girls were copying off this information that was given Mrs. Phoenix, were they copying from cards, ledgers, or what?

A. From rate cards.

Q. And that is a card on which information from the employees' clock cards is distributed after the employees' clock cards are interpreted by the I.B.M. machine, is that correct?

A. No.

(Testimony of Fred Rotter.)

Q. All right, will you kindly explain that?

A. We had a separate card there, what we term a rate card, giving the specific classification and the rate pertaining to the employee. A. Yes.

A. After making up our list in alphabetical cards which did not coincide with the check register, we checked the list we made up against the payroll to determine definitely that there was no one in there that should not be in there or that someone not in there should be in there.

Q. Now, the first list you supplied Mrs. Phoenix was at her request? A. Yes. [1242]

Q. Was that before the first of the meetings you had with her here in this office?

A. Well, that I don't definitely remember. To the best of my knowledge that list was requested prior to the first meeting to determine the classifications of the employees.

Q. As a matter of fact, you gave her that list in connection with the investigation the Board was making on the representation petition that the C.I.O. had filed, did you not? A. Correct.

Q. After you knew that the C.I.O. had filed a representation petition, but before there had been any meetings here in connection with it, is that correct? A. I think that is correct.

Q. All right. When did you first know that first list was not acceptable to Mrs. Phoenix and that you would have to make another one?

A. After the hearing, after the second hearing.

(Testimony of Fred Rotter.)

Q. Did you get that information from Mrs. Phoenix by phone? A. No.

Q. Letter?

A. I received instructions that the termination—just prior to the termination of the meeting.

Q. All right. What was said and by whom on that subject?

A. I presume at the meeting, N.L.R.B. meeting?

Q. Yes. You have already testified, you testified on direct [1243] examination and cross-examination about these two meetings here when the Board first called you last week. You remember that? A. Yes.

Q. Now, directing your attention to that second meeting—I don't want you to go through everything that was done again—but I want you to tell me what you remember, if you remember anything, concerning what was said by anyone on the subject of these lists, the old list that you had prepared previously and the new list that you now testify you were asked to prepare just prior to the termination of this second meeting here at the N.L.R.B.

A. During the latter part of the meeting it was brought out that—

Q. Don't say "it was brought out." Say what was said and who said it, if you can remember. Or if you can't remember, why, tell us you can't remember. Try to tell us what was said.

A. I can't recall anything other than specific instructions from Mrs. Phoenix to the effect that I make up a new list of employees, excluding all

(Testimony of Fred Rotter.)

terminated employees and listing all eligible voters.

Q. Well, did she tell you who was to be an eligible voter?

A. Yes. There was an exclusion there made by the various representatives of both unions, and agreed upon by various representatives [1244] of the unions that certain employees be excluded from the list. The employees mentioned were timekeepers, production workers——

Q. What was that last?

A. Timekeepers. Production control men. Pardon me.

Q. Timekeepers?

A. Production control men or expeditors.

Q. Go slow, now, because I can't write shorthand. Production control men?

A. Or expeditors.

Q. Or expeditors.

A. Or anyone else that had anything to do with——anyone else that had nothing to do, I should say, with production. That includes one or two more specific categories, one of which was two or three laboratory experimental men.

Q. Now, at the time she made this request, that you prepare a new list, did she hand you back the old list which you had prepared?

A. I do not recall.

Q. Did you keep a copy of the first list you prepared? A. I have a copy.

Q. You have a copy of it in your records?

A. Yes.

(Testimony of Fred Rotter.)

Q. You mailed the original to Mrs. Phoenix, I take it? A. Yes. [1245]

Q. You can't recall whether or not she ever gave it back to you? A. I do not.

Q. Now, you didn't put any employees down on that first list except those that were working at the time of your making of the list, did you?

The Witness: Repeat that, please.

(The question was read.)

The Witness: That is right.

Q. (By Mr. Garrett): Then when Mrs. Phoenix, at the second N.L.R.B. meeting, asked you to prepare a new list, excluding terminated employees, she referred, did she not, to employees that had been terminated between the time of that meeting and the time you made up the first list?

A. That is correct.

Q. How did the question of these Service-Incorporated employees come up?

A. That was voluntary action on my part, in assuming they were coming back to the O'Keefe & Merritt Company. I questioned Mrs. Phoenix whether or not to include them on the second list.

Q. Tell us where this question was asked. Was it in a meeting or over the telephone?

A. That was over the telephone while I was in the stage of preparing the list.

Q. After the second N.L.R.B. meeting? [1246]

A. Yes.

Q. All right. You called her up? A. I did.

Q. At the Board here?

A. At the Board here.

(Testimony of Fred Rotter.)

Q. You had a telephone conversation with her?

A. Yes.

Q. That was on your call to her, not her call to you; is that correct?

A. That is correct; my call to her.

Q. What did you tell Mrs. Phoenix then?

A. I told her of the seven or eight employees in question, and stated their occupation and their connection—no connection at that time. However, the new connection coming up and asked whether they would be considered eligible or not. She stated that she was not in a position to give a definite commitment at the time, but to list them and she would challenge them and see what disposition was to be made of them later on.

Q. There were eight of those employees; weren't there? A. I think that is the number.

Q. Finally incorporated in the second list?

A. Yes.

Q. Were those eight employees incorporated in your first list? A. I think not.

Q. Did anybody representing either one of the unions at [1247] either one of the N.L.R.B. meetings that you attended request these eight Service-Incorporated employees be incorporated in the list you made up?

A. They did not request they be added.

Q. Did any representative of either of the unions, or any of the unions, request that—at either of these meetings—employees of Pioneer Electric be incorporated in either of the lists you made up?

A. No. [1248]

(Testimony of Fred Rotter.)

Q. Now, you have fixed the time of your attendance upon the second meeting you testified to in Mr. Collins' office at which the contract was discussed, as being between January 9 and January 16, and then on cross-examination by Mr. Tyre you stated that it might have been even earlier than January 9th, as early as January 3, I think you said in response to his question. Now can you tell me the approximate length of time that had elapsed between the first meeting in Collins' office you attended and the second meeting which you have today tried to fix the time of. I don't ask you to establish the date of the first meeting, but the approximate time elapsing between that meeting and the second meeting about which you have testified.

A. I would estimate approximately two weeks.

Q. Did you ever attend any other meetings with the C.I.O. besides the two which you have mentioned?

A. I did not.

Q. Concerning these persons to whom you gave out upon request A. F. of L. application cards, whom you have recalled as being McNinch, Johnny Miles, Graham, and two others whose names you did not remember, are any of those persons still on the O'Keefe and Merritt payroll?

A. Yes.

Q. Which ones or which one? [1249]

A. Jack Miles.

Q. What does he do?

A. He is at present to the best of my knowledge a truck driver.

Q. Has he always done that kind of work there at the plant?

A. No.

(Testimony of Fred Rotter.)

Q. Withdraw that. At the time you gave him the A. F. of L. application card or cards, what kind of work was he doing?

A. He was in the receiving department.

Q. Is that where they receive the stuff that comes in off the trucks? A. Yes.

Q. What was he doing there, loading and unloading trucks?

A. To the best of my knowledge, yes, and occasionally going out on pick ups.

Q. So that at the time you gave him the card he was not working for O'Keefe and Merritt, was he? He was working for Service, Inc., isn't that a fact? A. Theoretically only.

Q. But who did he get his pay checks from?

A. O'Keefe and Merritt. Might I retract that? I am trying to refresh my memory whether or not there was any transfer made. An O'Keefe and Merritt Company paycheck.

Q. Did you have charge at that time of the payroll for [1250] Service, Inc.? A. No.

Q. So you would not know whether John Miles was on that payroll or not at the time he got the application card?

A. I am trying to determine whether a transfer took effect or place at the time or whether it was in December or January.

Q. At any of these two conferences that you participated in in Collins' office at which Despol was present, did Despol bring up the question of a C.I.O. strike?

(Testimony of Fred Rotter.)

A. There was a mention made when the clause was discussed between Mr. Collins and Mr. Despol that Mr. Despol did mention the fact that he would not be in any position to control any particular strikes depending on the situation, and Mr. Collins tried to emphasize and be more specific—have Mr. Despol be more specific in the United Steel Workers contract to eliminate any possibility of work stoppages or strikes.

Q. Did Despol make any threats or say that the companies sold steel, in any one of those conferences in Collins' office?

A. He did mention that, at which meeting I don't specifically recall, he mentioned in a round about way that he was representing steelworkers, the United Steelworkers of America, and possibilities of that kind could occur. [1251]

Q. What did Collins say about that, if anything?

A. He mentioned that he wasn't worried.

Q. Was any mention made in either one of those conferences about taking the dispute about representation to the National Labor Board?

A. Numerous times.

Q. Who by?

A. Mr. Despol himself made a verbal mention there that if things weren't acted upon according to N.L.R.B. ruling, why, we would have to be resorted to further—have to be referred to N.L.R.B. for enforcement of the certification.

Mr. Collins, in turn, mentioned that "That is a matter in your hands, if you feel that is going to be necessary. We have no objections."

(Testimony of Fred Rotter.)

Q. Directing your recollection back to the second meeting in Collins' office, would you now give me to the best of your recollection the names of the persons present besides yourself, Mr. Collins and Mr. Despol?

A. Milton Daley, Joe Arlotti. That is all I remember.

Q. You don't remember—you only remember those two at the second meeting besides yourself?

A. There were two others.

Q. Whose names you don't remember?

A. That is right.

Q. About the first meeting, who was there besides yourself, [1252] Collins and Despol?

A. Johnny Levascos, Frank Doyle, Percy Castro. One that I mentioned in previous testimony I don't recall the name of. Joe Sanchez.

Q. Was he the other one? A. Yes.

Q. Besides yourself, Collins and Despol there were four men from the plant; is that correct?

A. Yes.

Q. Well, was there anything else that you remember that was said by Mr. Despol at either one of those meetings in Collins' office about the situation he was in with respect to Pioneer employees when the election only covered O'Keefe and Merritt employees?

The Witness: Will you read that for me?

(The question was read.)

The Witness: A little question there regarding to who you are referring to being in question.

(Testimony of Fred Rotter.)

Mr. Nicoson: May I have that answer read?

(The answer was read.)

Mr. Garrett: I think by stipulation the answer may go out as being non-responsive.

Q. (By Mr. Garrett): Isn't it a fact that Despol said at one or the other of those meetings that he realized he was in a fix because he had forgotten to have the Pioneer [1253] Electric included in the election, because he figured the N.L.R.B. would help him out of that fix?

A. There were words mentioned to that effect by Mr. Despol.

Mr. Tyre: I move that be stricken, as calling for a conclusion of this witness. Let him state exactly what was said and not his conclusions as to the effect of what was said.

Mr. Garrett: I think that is a fair——

Q. (By Mr. Garrett): Just tell us a little more in detail——

Mr. Tyre: May I have that motion ruled on?

Trial Examiner Kent: The answer may be stricken. Reframe the question.

Mr. Garrett: May the question be read again to the witness?

Trial Examiner Kent: Very well.

(The question was read.)

The Witness: He did. [1254]

Q. At any of those meetings did Mr. Despol suggest that you have an election among the Pioneer

(Testimony of Fred Rotter.)

Electric employees to see who they wanted to represent them? A. He did mention that.

Mr. Garrett: That is all.

Mr. Collins: No questions.

Q. (By Mr. Nicoson): Now, Mr. Rotter, just a few questions. I will try to get rid of you and let you go. I believe your testimony was that you worked for O'Keefe and Merritt for approximately six or seven years, is that correct?

A. In that capacity.

Q. Prior to that time you had worked for them in some other capacity? What capacity prior to that time had you worked in?

Mr. Collins: Objected to as not proper cross-examination.

Mr. Nicoson: This is preliminary.

Mr. Collins: Very well.

Mr. Garrett: Will you please speak a little louder, Mr. Nicoson?

Mr. Nicoson: I am trying to find out what job he had prior to becoming personnel manager. As a matter of fact, I didn't know until he answered me there that he had any other capacity. This is purely preliminary, and that is all.

The Witness: Prior to becoming personnel manager I was [1255] on the payroll, in the payroll work, making out the payroll.

Q. (By Mr. Nicoson): What I am getting at is, you were personnel man prior to the war, weren't you? A. Yes, sir.

Q. And you had been then for a matter of say about two years? A. Yes.

(Testimony of Fred Rotter.)

Q. Prior to the war O'Keefe and Merritt Company had not manufactured any generators, had it?

A. No.

Q. It had manufactured gas appliances, gas stoves and things of that nature, is that right?

A. Also electric refrigerators.

Q. Also electric refrigerators. And by gas appliances, would that take in wall furnaces and floor furnaces?

A. That is right.

Q. Did they make the gas heaters that sit on the floor and tie in with a tube?

A. That is correct.

Q. When the war came along that sort of production was entirely eliminated, the gas appliances and stoves and heaters and wall furnaces and so forth, entirely eliminated?

A. Yes, it was.

Q. They went into the manufacturing of the generator?

A. Yes. [1256]

Q. And then Pioneer came in and helped manufacture the generators?

A. Yes.

Q. And then after V-J Day the government contracts were cancelled and you had very little of the generator work left, is that correct?

Mr. Collins: Just a moment.

Mr. Garrett: I don't think that is fair to the witness, as not differentiating between Pioneer and O'Keefe and Merritt.

Mr. Nicoson: All right.

Q. (By Mr. Nicoson): O'Keefe and Merritt had very little generator work left after the termination of the contract, is that correct?

(Testimony of Fred Rotter.)

Mr. Collins: Just a moment. Object to that as assuming a fact not in evidence. The evidence is that O'Keefe and Merritt did not have any generator work, that Pioneer did, as I recall.

Mr. Nicoson: That is not my recollection. I recall Mr. O'Keefe testified that he was a prime contractor with the government on this generator business particularly. Well, anyhow, may he answer, did you say?

Trial Examiner Kent: I was going to say I thought that they were manufacturing several lines at that time during the war of war products. I seem to have gotten that impression [1257] some place from the record.

Mr. Garrett: I got the impression that those generators were just a part of the product they were making, the generators went into something else.

Trial Examiner Kent: Yes, that is the impression I seem to have.

Q. (By Mr. Nicoson): What is the fact as to that, Mr. Rotter? Were O'Keefe and Merritt manufacturing any generators during the war?

Mr. Collins: Objected to as calling for a conclusion of the witness. There is no foundation laid. This witness is not qualified to answer.

Trial Examiner Kent: I think it will help to clarify the record. I think this witness can answer and may.

Mr. Nicoson: Will you put the question to him?

(Question read.)

A. Generators and a few other products.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): A few other what?

A. Products.

Q. Well, now, what were those few other products?

A. During the period of the war, bomb fins, nests, ammunition nests, also some projectiles.

Mr. Garrett: Can I have the answer read?

(Answer read.)

Mr. Garrett: What do you mean by projectiles?

A. Projectiles.

Mr. Garrett: Those generators didn't go into any of those things, did they?

The Witness: 21 millimeter projectiles for military aircraft.

Mr. Collins: Bullets?

The Witness: Bullets.

Q. (By Mr. Nicoson): After the contract termination you had no contract then with the government to do any of that work, and by saying you I mean O'Keefe and Merritt, is that correct?

A. I would not be qualified to recall.

Q. Do you know whether or not O'Keefe and Merritt, shortly after V-J Day, did curtail the production of generators and their parts and those other things you have mentioned?

A. There was appreciable deduction there in production.

Q. Is it likewise true there was an appreciable reduction in Pioneer of the things they made?

A. Yes.

(Testimony of Fred Rotter.)

Q. Isn't it also true that after the government contracts were cancelled and the generator and business and such depreciated, as you have put it, then O'Keefe and Merritt began to think about reconversion into peacetime products; is that right?

Mr. Collins: Just a moment. That is objected to as [1259] calling for a conclusion of the witness. What O'Keefe and Merritt began to think about certainly has no reference to this witness.

Trial Examiner Kent: Read the question.

Mr. Nicoson: I will strike the question.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Nicoson): Wasn't it shortly after the termination of the contract that O'Keefe and Merritt began work of tooling up, laying the ground work to produce once again gas appliances, such as stoves, wall furnaces and so forth?

Mr. Collins: That is objected to on the ground it calls for a conclusion; no foundation laid. This witness has testified he knows nothing about the production. He is a personnel man. He gets the kind of help they ask him to get. [1260]

Mr. Nicoson: I don't think he testified about that. He testified to all concerned here, every lawyer in this room, pretty thoroughly about the various production things. The only question was are you a production man? His answer was no.

Trial Examiner Kent: My own opinion would be that he probably would know quite generally what the plant was doing, in view of the nature of his position. If, however, he don't, of course, he should say so.

(Testimony of Fred Rotter.)

Will you read the question?

Mr. Nicoson: What is the ruling?

Trial Examiner Kent: He may answer.

Mr. Nicoson: Please read the question.

(The question was read.)

The Witness: The contemplated production is unknown to me. There was some effort made in getting under way, as far as other production was concerned.

Q. (By Mr. Nicoson): Then, I think you have testified, that on or about February 4th, when Pioneer took over, that there were certain products in the course of production? That was your testimony; wasn't it? A. Certain parts.

Q. Certain parts. And what were those parts for? A. Range parts.

Q. Only ranges? [1261]

A. Yes, to the best of my knowledge.

Q. To the best of your knowledge, it was only ranges? A. Yes.

Q. That is the work, then, that you have testified, when Pioneer took over, after February 4th, they continued on to complete; is that right?

A. There was no evidence shortly after V-J Day that type of production was going on.

Mr. Nicoson: No. Will you read the question back to the witness?

(The question was read.)

The Witness: Yes.

(Testimony of Fred Rotter.)

Q. (By Mr. Nicoson): That is the sort of work that they are engaged in at the present time?

A. Yes.

Q. Now, you have also testified that the work of Pioneer appreciably was reduced after V-J Day by the termination of the contracts and so forth. What did Pioneer do between the time those contracts were cancelled and the time they took over at February 4th?

A. I wouldn't know definitely because I never interested myself in determining what was going on over there.

Q. Do you know, Mr. Rotter, whether or not the Pioneer Electric Company had any more than, I believe you put it, eight or a dozen employees on February 4th? [1262]

Mr. Collins: Objected to as not the best evidence. This witness was not an employee of the Pioneer Electric—on what date?

Mr. Nicoson: February 4th.

Mr. Collins: I will offer to stipulate that on February 4th the Pioneer Electric Company had about 350 employees.

Mr. Nicoson: That wasn't what I was shooting at.

Q. (By Mr. Nicoson): Immediately prior to February 4th, do you know how many employees Pioneer Electric Company had?

Mr. Collins: Just a moment. That is objected to on the ground it calls for a conclusion of the witness. There is no foundation laid. It is not the

(Testimony of Fred Rotter.)

best evidence. This man was not an employee of Pioneer prior to February 4th.

Trial Examiner Kent: I think there is merit in the objection.

Mr. Nicoson: I merely asked him if he knew.

Trial Examiner Kent: If he knows, he may answer.

The Witness: I do not know.

Mr. Nicoson: We get the other points, see.

Q. (By Mr. Nicoson): Now, let's go back to the meeting, one of the meetings, which you testified to in response to Mr. Garrett's question, and where Despol, as you testified, said that he realized he was in a fix—he had forgotten to bring the Pioneer into it—and that the National Labor Relations Board would have to help him out of that fix. [1263] Do you remember that?

Mr. Collins: Mr. Nicoson, may I interrupt for a moment? I have a witness here who is the plant superintendent and who has an appointment with the doctor, as I understand, between 3:00 and 4:00 this afternoon. I wanted to ask him one question. I wonder if we might take him out of turn?

Mr. Nicoson: I am about through with this witness. I would like to have him answer this, and I think I am through with him.

Mr. Collins: Very well.

Q. (By Mr. Nicoson): You remember that portion of your testimony? A. Yes.

Q. How did Mr. Despol come to say that? Give us all the conversation that led up to it.

(Testimony of Fred Rotter.)

A. Mr. Collins had mentioned the fact that,—asked Mr. Despol whether or not he knew that this contract did not affect, was not going to affect all of the employees that he had figured or contemplated would be affected by it, due to the fact that the majority of the employees would be absorbed by the Pioneer Electric Company.

And Mr. Despol answered that he did overlook that situation there and if a thing like that is contemplated he would have to refer to the N.L.R.B. for further assistance.

Mr. Nicoson: No further questions. [1264]

Mr. Collins: As a matter of fact, Mr. Rotter, didn't I suggest he take it up with the N.L.R.B.?

The Witness: You did.

Mr. Collins: That is all.

Mr. Garrett: No questions.

Mr. Collins: That is all.

Trial Examiner Kent: You may be excused.

(Witness excused.)

Mr. Collins: I will call Mr. Joe Spallino.

JOE SPALLINO

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Mr. Garrett: If he has to get to the doctor, I am going to have some questions to ask this man.

Mr. Collins: You can recall him again. I want to get him out of here.

(Testimony of Joe Spallino.)

Direct Examination

By Mr. Collins:

Q. Will you state your name, please?

A. Joe Spallino.

Mr. Garrett: May it be understood my cross-examination of this witness may be reserved until such time as he can be recalled, if he is excused today?

Trial Examiner Kent: Yes.

Q. (By Mr. Collins): Mr. Spallino, calling your attention to some time in the spring of 1942 or of 1944, in the presence [1265] Mr. C. W. Collins, Mr. W. J. O'Keefe and Mr. Charles Spallino, do you recall having any conversation at all with Mr. Charles Spallino? A. I do.

Q. What was the conversation?

Mr. Nicoson: May I have the time? I am sorry. I didn't get it. [1266]

Mr. Collins: I am sorry, Mr. Nicoson, that is what I was trying to get. You recall Charles Spallino testified to a conversation he had with his brother Joe Spallino.

Mr. Nicoson: Was this prior to the time he came up to your office or at your office?

Mr. Collins: I will get to that too. I tried to get him down to whether it was 1942 or 1944.

Mr. Nicoson: Irrespective of that, does your question relate to before he was in your office or in your office?

Mr. Collins: In the office.

(Testimony of Joe Spallino.)

Mr. Nicoson: That is what I want to know.

Q. (By Mr. Collins): What was the conversation in my office?

A. As I recollect it is that well we had a little discussion about money, he was not making enough money, and he used to come over and cry on my shoulder.

Q. Excuse me. What was your capacity at that time?

A. I was working for the Pioneer Electric, plant superintendent of the Pioneer Electric at the time.

Q. I see.

A. And I told him, I says, he complained about making more money——

Mr. Nicoson: This all took place in Collins' office, that you are telling about now? A. No.

Mr. Nicoson: I move to strike it.

Q. (By Mr. Collins): I ask you, did you have a conversation with him before you came into my office? A. That is right.

Q. Relate that conversation.

A. He used to come over every now and then and complain about not making enough money, so I told him "Why don't you talk to Collins and see what you can do?" So he said he would, but I don't imagine he ever did. So another day he came around and complained about his compensation for his accident that he had—oh, I don't recall that I think that was in 1941, so I says, "All right," I says, "come on, I will take you to Collins and we will talk about it." So it happened to be there was

(Testimony of Joe Spallino.)

Collins, Bill O'Keefe, Charlie Spallino and myself, and that is the only conversation I ever had with him that I did talk to you, Mr. Collins, if you could help him out, to get him his compensation for his accident and seeing if you could get him a little raise.

Q. Was anything said in my office about the fact that he did or did not attend any union meetings on a Sunday preceding this conversation?

A. Not to my knowledge, no.

Q. Did he say anything to you in the factory about attending any union meeting?

A. Not in the factory. [1268]

Q. Did you ever talk to him at all about union meetings?

A. That is either at his own house or over at my mother's.

Q. Are you related to him?

A. He is my brother. I told him that I would not belong to—well, in my position I can't belong to any union, but I said the C.I.O. has been a radical outfit. His wife had to belong to it, she worked for a bakery, and by gosh if she missed a week, even if her kids were sick, she had to pay her dues, she was assessed \$2.00 or whatever it was because she did not attend the meeting, and that is the only time I ever did talk union to my brother, to any of my brothers, because I have never been for it.

Q. Now, Mr. Spallino, has the company ever given you any instructions to be pro or anti union in the common meaning of that word?

A. No.

(Testimony of Joe Spallino.)

Q. Have you ever punished anybody for being a member of either union? A. I have not.

Q. Have you ever attempted to persuade anybody to join or not join either union?

A. I have not.

Q. This conversation you testified to having taken place with Charlie Spallino, was that after working hours, the one about the union activity?

A. After working hours in his own home or my mother's home.

Q. So those matters came up just between you as brothers? A. That is just all family affairs.

Q. Did you tell him if he joined up with either union that you would see that he would get in any kind of trouble or be out of a job?

A. No, not once.

Q. As a matter of fact, have you taken any action against him? A. I have not.

Mr. Collins: You may cross-examine.

Cross-Examination

By Mr. Nicoson:

Q. At this meeting at your mother's or his home where you said something about the C.I.O. being a radical organization, what else did you say about the C.I.O. to Charles at that time?

A. Oh, the only thing I ever did talk to him about was that I didn't care—I didn't believe in any union that would assess a woman or a man when they had a sick child at home they would have to leave their child on a Saturday at that time, I imagine that was about five or six years ago, that

(Testimony of Joe Spallino.)

she was working in the bakery, that she had to leave her home, instead of taking care of her kid, to go to meeting. She used to bring that up to us all the time herself. [1270]

Q. Did you mention that to Charles at that time? A. Yes, sir.

Q. What else did you say to him?

A. That is about all. I just told him I didn't believe in anybody jeopardizing their own jobs and everybody else's jobs just to cause—just for any union at all.

Q. How did you happen to say that?

A. Oh, I don't know. The conversation just came up about talking about—you know, I have three brothers altogether, and one of them happened to bring up the question how is the C.I.O. coming along, one of my brothers doesn't work for O'Keefe and Merritt.

Q. Which one was that?

A. That is my smallest brother. He doesn't work at the plant at all.

Q. Was your other brother, was the one who is the foreman, there at the time? A. Yes, sir.

Q. The younger brother asked how the C.I.O. was getting along? A. Yes.

Q. And that is how this conversation got started. Didn't you at that time tell Charles that he put you on the spot because you were superintendent there of the Pioneer Electric Company? [1271]

A. Oh, I might have said that. I might have said that, yes.

(Testimony of Joe Spallino.)

Q. And you also told him that it would be a brotherly favor to you and it would be a good thing for him to lay off the C.I.O. because he would be on the spot?

A. I don't recall the exact words that I told him, but I didn't like any of them, didn't want any unions.

Q. Your present position at O'Keefe and Merritt, you are plant superintendent?

Mr. Collins: Just a moment. Objected to as not proper cross-examination.

Mr. Nicoson: Since when have we been following that rule?

Mr. Collins: I didn't ask him anything about what his present job was.

Mr. Nicoson: That is all I want to find out, I think that may be true.

Trial Examiner Kent: The answer may be taken. It may not be strictly cross-examination, but as long as it clears up the record I think you may inquire.

Q. (By Mr. Nicoson): Would you answer that question? Are you plant superintendent? [1272]

A. Yes.

Q. Shortly after V-J Day you left Pioneer and became plant superintendent of O'Keefe and Merritt Company, isn't that correct, A. Yes.

Q. Then after February 4th, when Pioneer took over, you went back with Pioneer as plant superintendent? A. Yes.

(Testimony of Joe Spallino.)

Q. Then after February 4th, when Pioneer took over, you went back as plant superintendent?

A. Yes.

Q. And prior to the Pioneer Company coming in the plant, before coming into existence, what was your job? Did you get the time clear, now?

A. Between the old Pioneer and the new Pioneer?

Q. No, before Pioneer ever came into existence, at the time right just before that, the testimony here is that Pioneer was organized sometime in August, 1942.

A. That is right.

Q. Just immediately prior to that time you were employed by O'Keefe and Merritt, were you not?

A. Yes, sir.

Q. What was your job?

A. I was plant assistant superintendent.

Q. You were assistant to Bill O'Keefe, is that correct?

A. Yes.

Mr. Nicoson: That is all. [1273]

Redirect Examination

By Mr. Collins:

Q. This conversation you had with your brother, Mr. Spallino, either in your home or in your mother's home, wherever it might have been, that was several years ago?

A. That is quite a while ago. I imagine it is the latest part of 1942 or into '43, somewhere around there.

Mr. Collins: That is all.

(Testimony of Joe Spallino.)

Recross-Examination

By Mr. Nicoson:

Q. You were in Pioneer at the time?

A. I was with Pioneer then.

Mr. Nicoson: That is all.

Mr. Collins: You may be excused.

Trial Examiner Kent: You are excused.

(Witness excused.)

Mr. Collins: Mr. Matrenga, please.

LAWRENCE MATRENGA,

a witness called by and on behalf of the respondent,
having been *previous* duly sworn, was examined and
testified as follows:

Direct Examination

By Mr. Collins:

Q. Mr. Matrenga, are you employed——

Mr. Tyre: Pardon me. May we have the witness' full name?

Mr. Collins: Yes. What is your name?

The Witness: Lawrence Matrenga. [1274]

Q. (By Mr. Collins) Mr. Matrenga, shortly before the election conducted in the plant of O'Keefe and Merritt Company, on the 20th of November, 1945, what was your job for the O'Keefe and Merritt Company? A. Foundry foreman.

Q. Foundry foreman. Do you recall seeing Mr. Charles Spallino in the foundry passing out some kind of cards or going around talking to various employees? A. I did.

(Testimony of Lawrence Matrenga.)

Q. Did you approach Mr. Spallino and ask him what he was doing in your department?

A. I never.

Q. Did he tell you what he was doing in there?

A. Told me he was passing these turkey tickets out.

Q. Did he tell you he was organizing for the A. F. of L. in your department? A. He never.

Mr. Collins: You may cross-examine.

One more question.

Q. (By Mr. Collins): Do you know what Mr. Spallinos' job in the Five and Over Club was at that time?

A. He was the president of the Five and Over Club.

Q. Was it part of his job to come in and around that department in connection with various club activities?

A. He was there a lot of times, all over the shop, in fact. [1275]

Q. You have seen him in your department before wandering around doing miscellaneous things?

A. I have.

Q. Did you ask any of the men what he was doing in there? A. No, I didn't.

Q. But he did tell you that he was attempting to pass out the cards for the turkeys for November, Thanksgiving Day?

A. That is right, he was giving turkey tickets out.

Mr. Collins: You may cross-examine.

(Testimony of Lawrence Matrenga.)

Cross-Examination

By Mr. Nicoson:

Q. Isn't it a fact, Mr. Matrenga, that while Charles Spallino was president of the Five and Over Club he went through and in and out of your department quite a bit of the time?

A. When he was president, yes, sir.

Q. And you didn't inquire every time he came in there what he was doing? A. No, sir.

Q. Or did you interfere in any way with what he was doing? A. Never.

Q. And you are not sure now that you always knew what he was doing while he was in there, are you?

A. At the time he came out there he was giving the turkey tickets out. The only reason I found out, I went after my own, and he said he didn't have it.

Q. Did you know whether that was all that he was passing out at that time?

A. That is all I knew.

Mr. Nicoson: No further questions.

Q. (By Mr. Garrett): How many men did you have working in the foundry at that time, Mr. Matrenga? A. Oh, let's see, between 75 or 85.

Q. What were you making?

A. At that time?

Q. Yes.

A. Well, we was making outside work and a few stove parts.

Q. What was this outside work?

A. Plumbing ware.